Rules and Projects Committee (RUPRO)

TELECONFERENCE MEETING

WEDNESDAY, AUGUST 21, 2019
12:10 TO 2:30 P.M.

JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS COMMITTEE

Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Appellate Procedure: Notice of Appeal and the Record in Civil Commitment Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.843; amend rule 8.320; approve form APP-060

Recommended by
Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 31, 2019

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

Executive Summary

The Appellate Advisory Committee recommends adopting a new rule of court, describing the required contents of the normal record on appeal for civil commitment cases, and highlighting the existence of the new rule in a comment to an existing rule. The committee also proposes a new form notice of appeal for civil commitment and mental health cases. This proposal is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt California Rules of Court, rule 8.483, describing the required contents of the normal record on appeal for civil commitment cases. Rule 8.483 would be included in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals), as amended to expand the scope of chapter 6 to also apply to civil commitment appeals by renaming it "Conservatorship and Civil Commitment Appeals." To address any potential confusion caused by the placement of the new rule, the committee also recommends adding an Advisory Committee comment to existing rule 8.320 alerting litigants to

the new rule. The committee also recommends that the council approve *Notice of Appeal—Civil Commitment/Mental Health Proceedings* (form APP-060).

The text of new rule 8.483 and amended rule 8.320, and the proposed new form are attached at pages 12–16.

Relevant Previous Council Action

There is no relevant previous Judicial Council action that might impact the council's consideration of this proposal.

Analysis/Rationale

Rule 8.483

The California Rules of Court[1] provide specific direction as to what should be included in the normal record on appeal in many types of cases.[2] 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. To eliminate confusion on behalf of litigants and the courts, the committee proposes a new rule of court governing the normal record on appeal in civil commitment cases.

Proposed new rule 8.483 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 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 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 (LPS) 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. An Advisory Committee comment to the new rule would state that: "The record on appeal of orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480." Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding

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

[2] See, for example, rules 8.120 (unlimited civil appeals); 8.320 (criminal appeals); 8.407 (juvenile appeals and writs); 8.610 (death penalty appeals); 8.830 (limited civil appeals); and 8.860 (misdemeanor appeals). Additionally, rule 8.480 governs the record on appeal from orders establishing conservatorships under Welfare and 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.

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 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.

Form APP-060

The Judicial Council publishes several form notices of appeal.[3] However, no form notice of appeal specifically applies to civil commitment cases, and it has been suggested that such a form would help simplify the appeal process for litigants and courts. The proposed new form notice of appeal (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but has been modified for use in civil commitment and LPS Act mental health conservatorship and commitment appeals. In particular, given that the person subject to the civil commitment order may have been 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." The form is broader in scope than the proposed new rule governing the normal record on appeal in civil commitment cases, and may also be used in LPS Act conservatorship and commitment appeals. The form includes an item listing the types of proceedings with which it may be used. The form would be included in the "APP" (Appellate) category.

Policy implications

The committee did not identify any significant policy implications relating to the proposal, and none were raised in the public comments.

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

Comments

The proposal was circulated for public comment between April 11 and June 10, 2019, as part of the regular spring comment cycle, and the committee received nine comments. Four commenters, including three courts and a professional organization, agreed with the proposal. One court agreed with the proposal if modified. Four commenters, including an individual attorney, a court, and two professional organizations, did not indicate a position on the proposal but provided substantive comments. A chart with the full text of the comments received and the committee's responses is attached at pages 17–38. The main comments and the committee's responses to these comments are discussed below.

Rule 8.483

None of the commenters expressed overall opposition to the adoption of a new rule governing the record on appeal in civil commitment cases, the proposed placement of the rule within an expanded chapter 6 of title 8, division 1 of the appellate rules, or the proposed Advisory Committee comment to existing rule 8.320, cross-referencing the new rule. The committee therefore recommends that the Judicial Council adopt proposed new rule 8.483 as it was circulated for public comment, subject to the modifications discussed below.

Comments regarding the scope of the rule

The invitation to comment asked whether the scope of the rule—limited to civil commitment appeals stemming from criminal proceedings—is appropriate, or whether it should be extended to any other types of proceedings such as civil commitments under the LPS Act. Four commenters responded that the scope is appropriate as drafted. But one individual commenter responded that the new rule should also cover Murphy conservatorships because they arise out of criminal proceedings. Likewise, another commenter stated that: "these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings." The committee understands this comment to reflect the opinion that Murphy conservatorships, and perhaps other types of LPS Act commitments, should be included within the scope of the new rule.

The Appellate Advisory Committee considered these suggestions to expand the scope of proposed rule 8.483 to also include Murphy conservatorships under the LPS Act, but decided not to modify the rule in this way. Though Murphy conservatorships do follow from criminal proceedings and thus could reasonably be included within the scope of the new rule, Murphy conservatorship appeals appear to be covered by existing rule 8.480, governing the record on appeal from orders establishing conservatorships under Welfare and Institutions Code section 5350, et seq.[4] The committee concluded that it could create confusion if rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. However, to address this issue, the committee included an Advisory Committee comment to rule 8.483 stating, "The record on appeal of orders establishing conservatorships under Welfare and Institutions Code

[4] See Welf. & Inst. Code, § 5350(b)(2), referencing conservatorships under section 5008(h)(1)(B), commonly referred to as Murphy conservatorships.

section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480."

Comments regarding other provisions of the rule

The invitation to comment also asked whether any other types of documentary exhibits should be included in the clerk's transcript. Two courts responded in the negative, while a third court noted that allowed exhibits should be "based on existing rule 8.320." Because proposed rule 8.483 was drafted based on rule 8.320, the committee understood these comments to reflect agreement with the treatment of documentary exhibits under the proposed new rule as circulated.

However, an individual attorney commented that probable cause transcripts should be explicitly listed in the rule as part of the standard record on appeal, although they may be implicitly encompassed by the inclusion of the "dispositional hearing" transcript in subdivision (c)(8). The committee concluded that it would be helpful and nonburdensome to include a probable cause transcript in the relatively few cases where one is available, and modified subdivision (c)(8) to include probable cause hearing transcripts as part of the reporter's transcript.

This commenter also suggested that it is unclear whether subdivision (b)(13), which requires the clerk's transcript to include "[a]ny diagnostic or psychological reports submitted to the court," includes similar exhibits submitted to the court at trial or a probable cause hearing. To clarify that diagnostic or psychological reports submitted to the court—including at trial or a probable cause hearing—should be included in the clerk's transcript, the committee modified subdivision (b)(13).

The individual attorney's comments also reflected a concern that proposed rule 8.483(d), addressing exhibits,[5] could make it more difficult for appellate counsel to obtain a complete record on appeal. The commenter explained that exhibits in civil commitment cases are often redacted, and an unredacted version is often needed for the appeal. Additionally, according to the commenter, in civil commitment appeals, appellate counsel is often not appointed until after the record is prepared, so it is not unusual for appellate counsel to petition the Court of Appeal to augment the clerk's transcript to include additional exhibits after the record is prepared. The commenter contended that subdivision (d), as circulated for comment, could be interpreted to eliminate the Court of Appeal's authority to grant such requests. It was suggested that proposed rule 8.483 be modified to either (1) provide appellate counsel with a window of time to designate additional records under rule 8.122, or (2) make clear that the clerk's transcript can be augmented to include exhibits. However, the committee determined that no such modification was necessary because the rule, as circulated, does not create a bar to augmenting the record when otherwise appropriate.

[5] Proposed rule 8.483(d) provides: "Exhibits admitted into 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." This phrasing is identical to existing rule 8.320(e), governing exhibits in connection with criminal appeals.

The invitation to comment further asked whether the proposed rule should 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. All four commenters who responded to this question agreed that the rule should limit these items to appeals in which the appellant is the person subject to the civil commitment.

Finally, one commenter proposed several additional modifications to proposed rule 8.483. First, the commenter suggested modifying subdivision (a)(1) to specify that the rule governs "appeals from civil commitment orders (including involuntary medication orders) under Penal Code . . ." because subdivision (c)(1), as circulated for public comment, required that the reporter's transcript contain the oral proceedings on a motion for involuntary medication and most commitment schemes to which the rule applies may lead to involuntary medication orders. The committee discussed this comment, and decided that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Additionally, the records needed for the record on appeal of a civil commitment case may be different from the record in an appeal of an involuntary medication order. Thus, the committee declined to add the suggested language to subdivision (a)(1), and instead omitted the phrase "or motion for involuntary medication" from subdivision (c)(1) to clarify that the rule does not apply to the appeal of involuntary medication orders.

Second, the commenter recommended altering the parenthetical description of Penal Code section 1600 et seq., in both subdivision (a)(1) of the rule and item 3 of the form from "(continue outpatient treatment or return to confinement)" to "(outpatient placement and revocation)," to more accurately describe the scope of that statutory scheme. The committee agreed with this modification to the rule and form.

Third, the commenter recommended modifying subdivision (b)(1) to require the clerk's transcript to contain, not only the petition, but also "any supporting documents filed along with the petition." The committee agreed that this is a useful suggestion, but also considered that the proposed modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. However, because some other appellate rules require not only the petition but also supporting documents filed therewith, the committee concluded that this modification would not make rule 8.483(b)(1) an outlier and modified the proposal accordingly.

Fourth, the commenter recommended modifying subdivision (b)(10) to remove the requirement that the certificate of probable cause be included in the clerk's transcript, because the certificate of probable cause requirement does not apply to civil commitment proceedings, even those stemming from criminal proceedings. The committee agreed and modified the proposal accordingly.

Form APP-060

None of the commenters expressed any general opposition to the adoption of a new form notice of appeal for civil commitment cases, or the proposed "APP" designation assigned to it. The

committee therefore recommends that the Judicial Council approve proposed form APP-060 as it was circulated for public comment, subject to the modifications addressed below.

Comments regarding the scope of the form

The invitation to comment asked whether the scope of proposed form APP-060—circulated for public comment to be limited for use in civil commitments stemming from criminal proceedings—was appropriate, or whether it should also be available for use in other civil commitment appeals, such as those under the LPS Act. Two courts and one professional organization responded that the scope of the form was appropriate as circulated. Another professional organization similarly agreed, but noted that the proposed form was not, on its face, limited for use only in civil commitment appeals stemming from criminal proceedings and might be mistakenly used for civil commitment orders stemming from noncriminal proceedings. However, given that item 3 contains a checklist of code sections under which the defendant/respondent is being held, the committee found it unlikely that the form would be used for an unauthorized purpose and made no change to the form based on this comment.

Other commenters recommended altering the scope of form APP-060. One court recommended that the form also be made available for use in appeals from Mentally Disordered Sex Offender (MDSO) commitments under former Welfare and Institutions Code section 6300 because, although that statute has been repealed, appeals of extension orders are still being filed. The committee agreed with this suggestion, and added a checkbox to item 3 for selection where the person subject to the civil commitment is being held subject to "Former Welfare & Institutions Code, § 6300 (MDSO)." Also, though this comment was directed to the form as opposed to the rule, the committee decided that it was similarly appropriate to modify proposed new rule 8.483 subdivision (a)(1) to extend to MDSO appeals.

Another court recommended that the form *not* be available for use in appeals of civil commitment orders made under Welfare and Institutions Code section 6500 (developmentally disabled persons), and instead that a separate form be created for appeals where the petitioner may be someone other than the person subject to the commitment order. However, as discussed further below, rather than omit this category of civil commitments from the scope of the form and creating a second new form, the committee concluded that it would be preferable to expand the scope of the form to encompass these and other types of commitment appeals that do not necessarily stem from criminal proceedings.

Finally, one commenter recommended that the scope of proposed new form APP-060 be expanded so that it is available for use both in civil commitment appeals stemming from criminal proceedings as well as in LPS Act appeals. The commenter contended that there is no reason a single form notice of appeal cannot be used for appeals under both existing rule 8.480 and proposed new rule 8.483, and noted that a single "unofficial" form notice of appeal is already being used successfully for both types of commitment appeals in at least one county. Having further considered the issue, the committee was persuaded that a single form notice of appeal available for LPS Act proceedings (including commitments under Welfare and Institutions Code section 5300 et seq. and conservatorships under section 5350 et seq.) would be useful to litigants

and courts, and the scope of the form should be expanded beyond civil commitments stemming from criminal matters to include LPS Act conservatorship and commitment appeals.

In light of the foregoing, the committee modified item 3 of the proposed new form to include a checkbox for: (1) "Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments);" (2) "Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships);" and (3) "Former Welfare & Institutions Code, § 6300 et seq. (MDSO)." To more accurately indicate the expanded scope of the form, the committee altered the form name to "Notice of Appeal—Civil Commitment/Mental Health Proceedings" and added a reference to rule 8.480 in the bottom right corner.

Other comments on the form

Several commenters addressed other aspects of the form. With respect to the form caption, one commenter recommended that the caption, currently prefilled with "People of the State of California v.," be left fillable because some cases may be initiated by a public guardian or hospital. Another recommended that the caption be modified to "People of the State of California v. / In re:" to account for civil commitment proceedings similarly captioned in the trial court. And a court recommended that the form refer only to "respondent" rather than "defendant/respondent" throughout, to make it consistent with trial court style and the Legislature's form of petition for judicial commitment set forth in Welfare and Institutions Code section 6251, reflect the treatment and public safety purposes of civil commitment, and because not all civil commitments for which the form may be used arise out of criminal proceedings.

As it did prior to circulation of the proposal for public comment, the committee gave significant consideration to these issues. With respect to the form caption, in light of the recommended expanded scope of the proposed new form and to account for appeals that do not have a criminal caption in the trial court, the committee modified the caption to remove reference to "People of the State of California v." and instead provided space for the case name in the trial court and the name of the defendant/respondent. 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 concluded that using the term "Defendant/Respondent," defined as "the person subject to the civil commitment order," most clearly signifies that the form may be used for civil commitment proceedings that arise out of underlying criminal proceedings but not necessarily designate that person as a criminal defendant for purposes of the civil commitment appeal. The committee disagreed with removing all reference to "defendant" on the form.

One commenter also recommended that item 2 be modified to include a check box for when the matter has been resolved "after an admission, stipulation, or submission" and that the "other" choice be renumbered as subdivision (d) and made lower case. In item 3, this commenter recommended modifying the parenthetical descriptor of Welfare and Institutions Code section 1600 et seq. consistent with its suggestion relating to the rule discussed above. The committee agreed with both suggestions and modified the form accordingly.

Alternatives considered

The committee considered many different alternatives, most of which have been addressed above in the Comments section. Additional alternatives are discussed below.

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, the committee decided that basing the new rule on the existing rule governing criminal appeals, rule 8.320, 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 governs. Other potential modifications to the scope of the proposed new rule were considered in connection with the comments and are addressed above.

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 would require the creation of a new chapter containing only a single rule, which is discouraged. The committee specifically asked for public comment on the appropriate placement of the rule, and all commenters who responded agreed with the proposed placement in an expanded chapter 6.

Notice of Appeal—Civil Commitment/Mental Health Proceedings (form APP-060)

The committee considered not developing a new form notice of appeal 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 and more useful than using any of the preexisting forms.

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 the scope of the proposed new form was expanded to include appeals of commitments and conservatorships that do not necessarily stem from criminal proceedings, 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/mental health proceedings 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.

Finally, the committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment/Mental Health Proceedings* is the most appropriate name.

Fiscal and Operational Impacts

Some minimal fiscal and operational impacts are expected. In their comments, the Superior Courts of San Bernardino, San Diego, and Los Angeles Counties addressed the potential implementation requirements for courts. The Superior Court of San Bernardino County noted that some training on the new rule and form would be required, and it would take approximately six hours to revise the court's internal manuals and forms. The Superior Courts of San Diego and Los Angeles Counties similarly stated that some minimal staff training would be required, and internal procedures would need to be revised. It appears from these comments that any potential implementation requirements would be relatively minimal and do not present a barrier to adoption of the proposal.

Attachments and Links

1. Cal. Rules of Court, rules 8.320 and 8.483, at pages 12–15
2. Form APP-060, at page 16
3. Chart of comments, at pages 17–38

Rule 8.483 of the California Rules of Court is adopted and rule 8.320 is 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. (outpatient placement and revocation), and 2962 et seq. (mentally disordered offenders); Welfare and Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (developmentally disabled persons), and 6600 et seq. (sexually violent predators); and former Welfare and Institutions Code section 6300 et seq. (mentally disordered sex offenders).

(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 and any supporting documents filed along with 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;

(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, including at the trial or probable cause hearing;

(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;

(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, including any probable cause 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.

Advisory Committee Comment

The record on appeal of orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **7-29-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
CASE NAME: DEFENDANT/RESPONDENT:	
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS	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 or conservatorship 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. ☐ after an admission, stipulation, or submission.
   d. ☐ 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, § 5300 et seq. (LPS Act commitments)
   ☐ Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
   ☐ Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
   ☐ 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)

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section Sacramento, CA	NI	The Committee on Appellate Courts supports this proposal. The Committee has some concerns that the proposed form, APP-060, does not facially limit its use for appeals of civil commitment orders stemming from criminal proceedings, but not other types of commitment orders. As such, there is some concern that litigants subject to other civil commitment orders may mistakenly use APP-060 to appeal civil commitment orders stemming from non-criminal proceedings.	The committee notes the commenter's support for the proposal, and has considered the concern that the form might be used for an unauthorized purpose. However, given that item 3 contains a checklist of code sections under which the person subject to the civil commitment is being held, the committee concluded that the form as drafted makes clear that it is for use in those specified proceedings.
2.	First District Appellate Project By Jonathan Soglin, Executive Director Oakland, CA	AM	A. Proposed New Rule 8.483 FDAP agrees with the Committee's proposed addition of new rule 8.483 governing the contents of the normal record on appeal in civil commitment cases. The contents of appellate records in the types of civil commitment cases to which the new rule would apply are sufficiently different from the contents of records in LPS Act appeals such that the creation of a separate rule (in additional to rule 8.480) seems appropriate. The location of the new rule appears appropriate as well. Therefore, FDAP's comments are limited to the provisions of the proposed new rule itself. **Subdivision (a)(1)**, which specifies the types of proceedings to which the proposed new rule would apply, does not include any reference to involuntary medication proceedings, though subdivision (c)(1) indicates the rule is intended to apply to such proceedings. Therefore, FDAP recommends that the opening clause of	The committee notes the commenter's support for this portion of the proposal; no response is required. The committee appreciates this suggestion. However, involuntary medication proceedings, and appeals therefrom, may be separate from the civil commitment appeals encompassed by the new rule, and this proposed modification would thus expand the scope of the rule beyond what is intended. To minimize confusion and provide

SPR19-01
Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			proposed subdivision (a)(1) be amended to add the following bolded language: "Except as otherwise provided in this rule, rules 8.300-8.368 and 8.508 govern appeals from civil commitment orders **(including involuntary medication orders)** under Penal Code…." Nearly all of the civil commitment schemes to which the proposed new rule applies may lead to involuntary medication orders. (See, e.g., Pen. Code, § 1370, subd. (a)(2)(b) [incompetent to stand trial]; *In re Qawi* (2004) 32 Cal.4th 1 [mentally disordered offenders]; *In re Calhoun* (2004) 121 Cal.App.4th 1315 [sexually violent predators]; *In re Greenshields* (2014) 227 Cal.App.4th 1284 [not guilty by reason of insanity].)	clarity, the proposal has instead been modified to omit the phrase "or motion for involuntary medication" from subdivision (c)(1).
			Subdivision (a)(1) includes orders issued under Penal Code section "1600 et seq. (continue outpatient treatment or return to confinement)" as one of the types of orders to which the new rule would apply. FDAP recommends altering the parenthetical description of this statutory framework to read: "(outpatient placement and revocation)." As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., *People v. Sword* (1994) 29 Cal.App.4th 614); instead, it only describes continued placement and termination of outpatient status. The shorter language FDAP provides would be more comprehensive.	The committee appreciates this suggestion to revise the parenthetical description of Penal Code section 1600 et seq., and has modified the proposal accordingly.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			Subdivision (b)(1) requires inclusion of the "The petition" in the clerk's transcript as a normal record item. FDAP recommends changing this language to "The petition and any supporting documents filed along with the petition," as, in our experience, appellate records in civil commitment appeals sometimes include only the petition but not the supporting affidavits, declarations, reports, or other documents attached to the petition. (See, e.g., Pen. Code, § 2970, subd. (b) ["The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of State Hospitals either in a state hospital or in an outpatient program"]; Pen. Code, 1026.5, subd. (b)(2) ["The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1)"].)[1]	The committee appreciates this suggestion to expand subdivision (b)(1) of the proposed new rule to include "[t]he petition and any supporting documents filed along with the petition," and has modified the proposal accordingly.
			1 Although not contemplated by the invitation to comment, FDAP also recommends a similar amendment to rule 8.480(b)(1), which identifies normal record items in LPS Act appeals, such that the language, which currently reads "The petition" as well, be amended to read "The petition and any supporting documents filed along with the petition." (See, e.g., Welf. & Inst. Code, § 5361 ["The petition must include the opinion	The committee appreciates this suggestion, but notes that it is outside the scope of this proposal and may be considered in the future by an appropriate committee.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			of two physicians or licensed psychologists"].) **Subdivision (b)(10)** mandates that the clerk's transcript include "The notice of appeal and any certificate of probable cause filed under rule 8.304(b)." Because the certificate of probable cause requirement set forth in Penal Code section 1237.5 applies only to appeals taken from a judgment of conviction and does not apply to civil commitment appeals – even where the commitment follows criminal proceedings that previously involved a guilty or no contest plea – FDAP recommends omitting any reference to certificates of probable cause, such that the subdivision would simply read: "The notice of appeal." (See, e.g., *People v. Sanders* (2012) 203 Cal.App.4th 839, 847 [where the Court of Appeal recognized that the certificate of probable cause requirement "is not technically applicable in SVPA proceedings"]; *People v. Wagoner* (1979) 89 Cal.App.3d 605, 610 ["the Legislature could not have intended that [Penal Code] section 1237.5 would apply to appeals from convictions following an insanity plea"]; *People v. Kraus* (1975) 47 Cal.App.3d 568, 573 [no certificate of probable cause required on appeal from the denial of a post-judgment motion because "[t]he only statutory requirement for a certificate of probable cause is in Penal Code section 1237.5 which refers only to appeals 'from a judgment of conviction'"]; *People v. Arriaga* (2014) 58 Cal.4th 950, 959 [same].)	The committee agrees with this suggestion to omit reference to a certificate of probable cause and has modified subdivision (b)(10) of the proposed new rule accordingly.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			B. Proposed Notice of Appeal – Civil Commitment (form APP-060) **1. Comments on the Omission of LPS Act Conservatorships** The Committee's proposed notice of appeal form would not apply to LPS Act appeals because such an approach, according to the Committee, 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." (Invitation to Comment at page 4.) While it is true, as the Committee points out, that the proposed new rule of court for normal records in civil commitment appeals (8.483) solely applies to non-LPS Act civil commitments, that is only the case because there already is a rule of court for LPS Act appeals (8.480). And there is no reason why a single notice of appeal cannot be used for appeals falling under different rules of court. Significantly, the LPS Act serves as the state's "general civil commitment statute." (*In re Smith* (2008) 42 Cal.4th 1251, 1267.) The proposed new "Civil Commitment" notice of appeal should thus apply to LPS Act appeals as well.[2] [2] In deciding not to extend proposed rule 8.483 to LPS Act appeals, the committee pointed out, as one justification, that	The committee appreciates this comment, which it understands as a suggestion to expand the scope of the form for use in all types of civil commitment and Lanterman-Petris-Short (LPS) Act appeals. Having considered this issue, the committee agrees that it would be useful to expand the scope of the form and make it available for use in a broader range of civil commitment and LPS Act appeals and has modified the proposal accordingly.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			"civil commitments under the LPS Act do not necessarily stem from criminal proceedings[.]" (Invitation to Comment at page 3.) FDAP notes that civil commitment proceedings conducted under Welfare and Institutions Code section 6500 et seq. do not necessarily stem from criminal proceedings either, but such proceedings have been included in the proposed rule 8.483 and the proposed civil commitment notice of appeal form. Accordingly, LPS Act appeals would not be out of place alongside appeals from proceedings conducted under Welfare and Institutions Code section 6500 et seq. Omitting LPS Act appeals from the proposed form would create confusion for litigants and courts. Excluding LPS Act conservatorships from the proposed civil commitment notice of appeal form will leave such cases in limbo, as litigants are often confused as to whether they should be using the general civil form (APP-002) or the felony criminal appeal form (CR-120) for filing LPS Act appeals, especially because neither already existing form on its face appears to be appropriate for LPS Act appeals. Public defenders in the First Appellate District often contact FDAP asking which form to use to appeal from LPS Act conservatorships. Since August 2017, the Sonoma County Public Defender has been successfully using an unofficial notice of appeal form developed by	

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			that office and FDAP for appeals not just from civil commitments more closely related to criminal proceedings but also from LPS Act conservatorships. FDAP is aware of no confusion among litigants and courts attributable to the use of this form. In fact, FDAP has helped trial attorneys and conservatees file LPS Act appeals using the unofficial form and, anecdotally, is aware of litigants and courts who have used the form being pleased (and relieved) to know how to file an appeal from LPS Act conservatorships. **2. Comments on Contents of the Proposed Form Itself** **Sample Caption:** In the third box down from the top left, the proposed form provides a sample caption that begins with "PEOPLE OF THE STATE OF CALIFORNIA vs." Although it is generally the district attorney that initiates the commitment proceedings covered by the proposed notice of appeal form, not all the listed civil commitment proceedings are commonly captioned in this manner. For examples, appellate cases involving juvenile extended detention petitions (Welf. & Inst. Code, § 1800 et seq.) are usually captioned "In re" and not "People v." (See, e.g, *In re Lemanuel C.* (2007) 41 Cal.4th 33; *In re Howard N.* (2005) 35 Cal.4th 117.) Moreover, should the Judicial Council adopt FDAP's above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, a caption	The committee appreciates this suggestion and has modified the proposal to expand the caption of the form to reflect its use in a broader range of proceedings.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			beginning with "People v." would be particularly inappropriate. Thus, FDAP recommends that the case caption language be amended to read: "PEOPLE OF THE STATE OF CALIFORNIA vs./IN RE." **Section 2:** The proposed form includes three checkboxes for indicating the manner in which the case was resolved in the trial court: "after a jury or court trial," "after a contested hearing," and "Other." First, FDAP notes that only one of the three options begins with a capital letter. For consistency, either "Other" should begin with a lower case "o" or the word "after" alongside the other two checkboxes should begin with a capital "A." More substantively, FDAP recommends adding a fourth checkbox for when the matter has been resolved by admission, stipulation, or submission, which commonly occurs in civil commitment cases, particularly in cases involving competency commitments and LPS Act conservatorships. (See, e.g., Proposed Rule 8.483(b)(1) [identifying as a normal record item to be included in the reporter's transcript "The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication"].) FDAP recommends the addition of a checkbox – 2.c. – that reads "after an admission, stipulation, or submission." The "Other" checkbox would then be renumbered as 2.d.	The committee appreciates these suggestions and has modified the proposal accordingly.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			Section 3: The proposed notice of appeal form includes orders issued under Penal Code section "1600 et seq. (return to confinement)." FDAP recommends altering the parenthetical description of this statutory framework to read: "(outpatient placement and revocation)." As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., *People v. Sword*, *supra*, 29 Cal.App.4th 614); instead, it only describes termination of outpatient status. Lastly, should the Judicial Council adopt FDAP's above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, section 3 should be amended to add a checkbox for "Welfare and Institutions Code, § 5350 et seq. (LPS Act conservatorships)."	The committee appreciates this suggestion and has modified the proposal accordingly. The committee has considered this suggestion agrees that the scope of the form should be expanded to also include LPS Act conservatorship appeals and has modified the proposal accordingly.
3.	Rudy Kraft Attorney San Luis Obispo, CA	NI	This is a comment on Rule 8.483, the proposed rule relating to appellate records in civil commitment cases. I am a full time appellate attorney. Currently, my practice is 99% civil commitment and mental health appeals. I handle appeals in all of the various courts of appeal in the state. As proposed, the rule does not cover Murphy Conservatorships as found in Welfare and Institutions Code section 5008(h)(1)(B). I recognize that this is the Lanterman-Petris-Short section of the law which was deliberately	The committee has considered this suggestion, but concluded that it could cause confusion to expand the scope of the proposed new civil commitment rule to govern the normal record in Murphy conservatorship appeals in light of existing rule

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

	Commenter	Position	Comment	Committee Response
			excluded because those types of commitments do not arise out of the criminal justice system, but Murphy Conservatorships do, in fact, arise out of the criminal justice system. In fact, they follow upon Penal Code section 1370 competency procedures which are specifically included in the new rules. All of the specific reasons that the proposed rule has for including the type of proceedings that are included also apply to Murphy Conservatorships. The rule should be changed to include coverage of Murphy Conservatorships.	8.480. However, the committee has modified the proposal to add an Advisory Committee comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals.
			Sexually violent predators proceedings have probable cause hearings. Those hearings can be an important part of the appellate record and should be part of the standard record on appeal. There are appellate issues which directly arise out of those part of the proceedings. Depending on the case, the appeal might arise directly from the ruling at the probable cause hearing. Admittedly, in those cases that hearing might be viewed as the "dispositional hearing" but it would be clearer to just state that probable cause transcripts are part of the standard record. Under current law where criminal rules are used, they are a standard part of the record on appeal. There is no reason to change this.	The committee appreciates this suggestion and has modified the language of subdivision (c)(8) to reference transcripts from probable cause hearings.
			The proposed rule also includes "Any diagnostic or psychological reports submitted to the court" as being a standard part of the record on appeal which is good. However, it is not	The committee appreciates this suggestion and has modified subdivision (b)(13) of the proposal accordingly. The portion of the comment relating to exhibits more generally is addressed below.

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

	Commenter	Position	Comment	Committee Response
			entirely clear if a diagnostic or psychological report which is submitted to the court as an exhibit at trial or at the probable cause hearing is included. Those exhibits should not lose their status as a part of the standard record on appeal if they are introduced into evidence. In fact, the provisions of the proposed rule governing exhibits is problematic because it will make it more difficult for appellate counsel to obtain a complete record on appeal. Under current law—especially following the Supreme Court's ruling in *People v. Sanchez* (2006) 63 Cal.4th 665—it is not uncommon for a significant number of exhibits to be introduced into evidence in civil commitment cases. These exhibits are often critical to the appellate process and the evaluation of potential issues. Often these exhibits are redacted based upon disputed rulings by the trial court. Both the redacted and unredacted versions of these exhibits are necessary for the appellate attorney to evaluate the correctness of the trial court's rulings. Some exhibits which have not been redacted are also critical to the appellate process. Currently, some courts of appeals will grant motions to augment the records to included these exhibits (both redacted and unredacted) in the clerk's transcript while others will not. Proposed Rule 8.483(d), may well eliminate the courts of appeal's authority to grant such requests. This means that before filing the briefs, the only way for appellate counsel to view the exhibits is by traveling to	The committee appreciates the concerns relating to exhibits and has considered these alternative suggestions. However, the committee does not view the proposed rule as a bar to augmenting the record in appropriate cases, and believes appellate counsel will be able to obtain a complete record on appeal in civil commitment cases under the rule as drafted. Additionally, subdivision (d) mirrors rule 8.320(e), and the committee concluded it could cause confusion to have a different procedure for exhibits in civil commitment cases than in criminal cases.

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

	Commenter	Position	Comment	Committee Response
			the trial court. This problematic because appointed counsel in civil commitment cases does not necessarily live anywhere near the trial court. As already noted, I represent civil commitment defendants from all over the state. Depending on the county it can cost the state well in excess of $1000 for me to travel to a courthouse to look at documents. On the other hand, if the documents are included in the record, the cost is just the photocopying time and expense for the superior court clerk's office. This might be a necessary problem if such exhibits are not an appropriate part of the record for some actual reason but they are a part of the record. Rule 8.483(d) makes that clear, but states that exhibits must be transmitted to the court of appeal pursuant to rule 8.224. However, that rule is not any real help both because it only kicks in after the respondent's brief has been filed and because appellate attorneys are often not located anywhere near the appellate court house. Rule 8.224(a)(1) does recognize the availability of the procedures in Rules 8.122 and 8.124 but those procedures are drafted with normal civil cases in mind where the trial attorney is likely to be the appellate attorney or at least have some involvement in the appeal. That is not now things work in the civil commitment arena. I am normally not appointed to represent my clients until after the record is prepared. Even in those cases where I am appointed before the	

SPR19-01
Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			record is complete, I know nothing about the case until I get the record on appeal. Under Rule 8.122(a)(3) all exhibits can be included in the clerk's transcript if they are specifically identified by a party in its notice of designation of the record. This procedure may be adequate in the normal civil case but it is of no use in a civil commitment case where by the time appellate counsel is appointed the Rule 8.122 record designation process is no available. (Rule 8.124 doesn't help because appointed appellate counsel will not have copies of the exhibits and even if he or she obtains them from trial counsel, he or she would not be in position to affirmatively assert that the copies are correct and complete.) Therefore, I suggest that the proposed rule should address this problem. It could provide appellate counsel with a window of time to designate additional record under Rule 8.122. In the alternative, Rule 8.493(d) could be rewritten to make it clear that the clerk's transcript can be augmented to include exhibits rather than prohibiting such an augmentation.	
4.	Orange County Bar Association By Deirdre Kelly, President Newport Beach, CA	A	Does the proposal appropriately address the stated purpose? Yes. 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	The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			commitments under the LPS Act? Scope is appropriate, but rule should not be applicable to other types of civil commitment orders. Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? No. 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? Yes. 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? Yes, it should be placed in an expanded chapter 6 of title 8, division 1. Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes.	The committee appreciates the commenter's responses to questions presented in the invitation to comment regarding the proposed rule. No further response is required. The committee appreciates the commenter's input into the appropriate scope of the proposed new form, but has concluded that it would be helpful to litigants and courts to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			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? The scope of the form is appropriate. It should not be available for other types of civil commitment order. Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, give it "APP".	
5.	Superior Court of Los Angeles County	AM	Proposed Modifications First, the style of the appellate case in the notice of appeal form should not refer to the committed person as "defendant/respondent" but only as "respondent." This would make it consistent with the styles used in the trial courts on these civil petitions as well as the Legislature's petition forms set forth in Welfare and Institutions Code sections 6251 et seq., and prevent the treatment and public safety purposes of these civil commitments from being tainted with any penal purpose. Additionally, not all Welfare and Institutions Code section 6500 petitions for commitment of dangerous developmentally disabled persons arise out of criminal proceedings – see, Welfare and Institutions Code section 6502.	The committee appreciates this comment and has given significant consideration to this issue. The committee has decided that using the term "Defendant/Respondent," defined in the first instance as "the person subject to the civil commitment order" most clearly signifies that the form may be used in a broad range of appeals, including civil commitment proceedings that arise out of underlying criminal proceedings, while not designating that person as a criminal defendant for purposes of the civil commitment appeal.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			Second, the new Notice of Appeal form should include appeals from Mentally Disordered Sex Offenders committed under Welfare and Institutions Code section 6300. Although there are no new filings under the statute, there are still extension petitions for commitments under the statute being filed.	The committee appreciates this suggestion and has modified both the proposed new rule and form accordingly.
			Third, appeals from Welfare and Institutions Code section 6500 commitments should be covered by a separate notice of appeal form, since by statute the "petitioner" may be a number of different persons or entities, such as a parent, guardian, conservator, etc. This way, the style in the notice of appeal could be left blank to be filled in. Also, that notice should cover appeals from In re Hops petitions which also involve different persons.	The committee appreciates this suggestion but concluded that a second form is not necessary at this time, and has instead altered the caption and scope of the proposed new form.
			Request for Specific Comments Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the purpose.	The committee notes the commenter's support for the proposal. The committee appreciates the responses to the questions presented in the invitation to comment and the perspective on the impact on courts. No further response is required.
			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? No comment regarding applicability, however, from a clerical standpoint, it would be easier if there was standardization in processing civil commitment appeals.	

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			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? Yes, it would be easier for the clerical staff to prepare the record if we limit the number and types of items that are required for consideration to only those that are relevant to the civil commitment. 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? Yes, there is a close relationship between civil commitments and conservatorships. Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, categorizing this as an appeal form allows for consistency in the designation of appeals. 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? There would be a requirement to instruct and train staff on the use of this form in conjunction	The committee appreciates the commenter's input into the potential implementation requirements; no further response is required.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			with current appeal processing guidelines. There would also be a need to develop event and/or docket codes to identify this appeal type in the case management system. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient. How well would this proposal work in courts of different sizes? This proposal will work well in all courts.	
6.	Superior Court of Orange County Civil, Small Claims, and Probate division By Sean E. Lillywhite, Administrative Analyst/Officer	A	We agree that these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings. The proposed form is pre-filled with "People of the State of California" in the title. We recommend that this be left fillable as cases may be initiated by the Public Guardian or a hospital.	The committee appreciates this suggestion, but believes it could cause confusion to expand the scope of the rule to govern the normal record in Murphy conservatorship appeals in light of existing rule 8.480. However, the committee has modified the proposal to add an Advisory Committee Comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals. The committee agrees that the caption of the form should be modified to reflect potential use of the form where an underlying case contains a caption other than “People v.” and the form has been modified accordingly.
7.	Superior Court of San Bernardino County	A	• Does the proposal appropriately address the stated purpose? Yes • Is the scope of the rule appropriate, and in particular should the rule be applicable to any	The committee notes the commenter’s support for the proposal and input into the potential implementation requirements; no further response is required.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			other type of civil commitment order, such as commitments under the LPS Act? Yes • Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? No • 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? Yes • 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? Place in chapter 6 of title 8, division 1 • Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes • 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? Yes • Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, App form designation. The advisory committee also seeks comments from courts on the following cost and implementation matters:	

SPR19-01
Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Legal Processing Assistant training- Expected hours: 4 hours minimum. Revising processes and procedures- Expected hours: 6 hours to revise manuals, internal forms and update rules of court on current internal forms. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? It should not significantly impact business processes in courts of varying sizes.	
8.	Superior Court of San Bernardino County By Hon. Carlos M. Cabrera Appellate Division Presiding Judge	A	No specific comment.	The committee notes the commenter's support for the proposal; no further response is required.
9.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • 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? Yes, it is	The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			appropriate. It should be applicable to matters that stem from criminal proceedings. • Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? Exhibits should be included based on existing CRC 8.320. • 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? Yes. • 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? Yes, in an expanded chapter 6 of title 8, division 1. • Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes. • 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? Yes, it is appropriate if the DOB/CDC & Rehabilitation # is not needed as it is on the Felony NOA. The form should be available for matters that stem from criminal proceedings. • Should the form be given an "APP" (Appellate) form designation, or should it be in	The committee appreciates this comment as to the scope of the form but has concluded that it would be useful to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals.

SPR19-01

Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			another category of forms? Yes, it should be given an "APP" (Appellate) form designation. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC, I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with processing felony appeals. Procedures would need to be revised to add the normal record requirements for this appeal type. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? It would work well. Would not create issues.	The committee appreciates the commenter's input into the potential implementation requirements.

Item number:02

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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.)

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Appellate Procedure: Form of Filed Documents in the Appellate Division

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.815

Recommended by
Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 29, 2019

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

Executive Summary

The Appellate Advisory Committee recommends adopting rule 8.815 to govern the form of filed documents in the appellate division. The new rule would incorporate by reference the existing formatting requirements in rule 8.883(c) for civil and misdemeanor briefs filed in the appellate division. The new rule will resolve uncertainty and provide clarity regarding the proper formatting of documents filed in the appellate division of the superior courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt rule 8.815 to govern the form of filed documents in the appellate division by incorporating the existing formatting requirements in rule 8.883(c) for civil and misdemeanor briefs filed in the appellate division set forth.

The text of the new rule is attached at page 7.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, rules 8.800 through 8.936 of the California Rules of Court, were repealed and replaced in full, effective January 1, 2009. Rule 8.883 was amended in 2011, 2013, 2014, and 2016, but these amendments are not relevant to this proposal.

Analysis/Rationale

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800 through 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 from the appellate division.[3] However, whereas existing appellate division rules describe specific requirements regarding service and filing, 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] This has been a source of confusion for litigants.

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 these 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. Arguably, in the absence of any appellate division rule specifically governing the format of applications, motions, and other documents in that division, these trial court formatting rules should apply. However, this is unclear under the existing statutory scheme.

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 and Court of Appeal and to exclude the appellate division of the superior courts.[8] There is no rule expressly governing the proper format

---

[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)).

[4] See rules 8.806 (Applications) and 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") and rule 8.4 ("The rules in this division apply to: … Appeals from the superior courts, except appeals to the appellate divisions of the superior courts").

for applications, motions, or other documents in the appellate courts. Instead, existing rule 8.40[9] generally provides that such documents "may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b)." 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 specific to civil briefs, rule 8.204(b) is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the appellate courts more generally, including applications and motions. As noted above, however, these rules do not apply to documents filed in the appellate division.

Although there are similarities among the rules governing the form of filed documents in the trial courts and appellate courts, 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 format their submissions as best they can. Proposed new rule 8.815 is intended to provide clarity as to the proper formatting of applications, motions, and other documents filed in the appellate division. The new rule would mirror existing rule 8.40(a) governing formatting in the appellate courts, 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. Since litigants in the appellate division should already be familiar with the 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 would provide clarity for litigants and courts.

Policy implications

The committee did not identify any significant policy implications relating to the proposed new rule. The committee notes, however, that if the separate proposal to amend several appellate rules to create a uniform formatting scheme for electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 will no longer mirror Court of Appeal rule 8.40(a) (and existing appellate division formatting rule 8.883(c) will no longer mirror amended Court of Appeal formatting rule 8.204(b)). However, as discussed further below, the committee believes that this difference is appropriate, given the relevant operational differences between the appellate division and the appellate courts, including differences in the

[9] There is a separate proposal, *Appellate Procedure: Uniform Formatting Rules for Electronic Documents*, currently before the council that would, among other things, amend rules 8.40 and 8.204 to create uniform formatting rules for documents filed electronically in the appellate courts. The discussion of rules 8.40 and 8.204 included herein relates to the *existing* version of the rules.

[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. 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) and (c), 8.204(b)(10), 8.816(a), and 8.883(c)(8)). Compare generally rules 2.102 through 2.118 to rules 8.204(b) and 8.883(c).

electronic filing requirements and capabilities of the various appellate divisions throughout the state.

Comments

The proposed new rule was circulated for public comment between April 11 and June 10, 2019, as part of the regular spring comment cycle. One law firm, two organizations (the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association and the Orange County Bar Association), and four courts submitted comments on this proposal. All seven commenters agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 8–11.

Two commenters, the Superior Court of San Bernardino County and the Superior Court of Los Angeles County, agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, specifically noted that the proposal "addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants."

The only comment addressing the substance of the proposed new rule was submitted by a law firm (Horvitz & Levy LLP), which agreed with the proposal but noted, "The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact." The Appellate Advisory Committee understands this comment to refer to the potential interplay between this proposal and another proposal currently before the council that would, among other things, amend rules 8.40, 8.72, 8.74, and 8.204 to create uniform formatting rules for electronic documents filed in the Court of Appeal and Supreme Court (the appellate courts). If the uniform formatting rules proposal is approved as it was circulated for public comment during this spring cycle (SPR19-07), it would significantly revise and standardize the formatting requirements for documents filed electronically in the appellate courts.

The committee does not recommend that this proposal to adopt new rule 8.815 be modified based on this comment. The separate uniform formatting rules proposal does not address the format of electronically filed documents in the appellate division, creates no inconsistencies in the appellate division rules that must be addressed in this proposal, and will not alter any existing formatting requirements in the appellate division. Thus, any modification, such as adding an advisory committee comment, would seem to create, rather than negate, confusion about the interplay of the two separate rules schemes.

Additionally, it is true that proposed new rule 8.815, which incorporates by reference the formatting requirements for appellate division briefs in rule 8.883(c), was initially drafted to mirror existing appellate rule 8.40(a), which in turn incorporates by reference the existing

formatting requirements for civil appellate briefs in rule 8.204(b). And if the separate proposal relating to electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 and existing rule 8.883(c) will no longer mirror the amended appellate rules. The committee does not view this as an issue that requires modification of this proposal. While it is beneficial for the appellate division and appellate rules to be parallel where appropriate, this is an instance where the rules should differ, at least for now. Electronic filing is not available in all appellate divisions, and the proposed new uniform rules scheme governing electronic filing in the appellate courts is not currently appropriate for all appellate divisions or all case types within an appellate division. In any event, adding formatting requirements for electronically filed documents in the appellate division would exceed the scope of this proposal. However, electronic filing is increasing in the appellate division, and in the future the committee may well take up the issue.

Alternatives considered

The committee considered not making any changes to the rules, but concluded that a new rule specifically addressing the proper format for documents filed in the appellate division would provide clarity to litigants and courts.

The committee also considered whether to amend rule 8.817, the existing rule governing service and filing, to address the form of filed documents. However, the committee decided that it would be advisable to maintain a parallel structure between the Court of Appeal rules and appellate division rules by creating a standalone formatting rule for the appellate division that mirrors 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.

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

Finally, in response to the comment discussed above about formatting for electronically filed documents (presumably in connection with the separate proposal before the council), the committee also considered whether further revision of proposed new rule 8.815, existing rule 8.883, or any other appellate division rules is necessary to address this issue. For the reasons discussed above, the committee concluded that no modification of the proposal is needed. Electronic filing in the appellate division, including rules governing the formatting of electronically filed documents in that division, may be considered in the future.

Fiscal and Operational Impacts

Some minimal fiscal and/or operational impacts are expected. In their comments, the Superior Courts of San Diego, Orange, and Los Angeles Counties addressed the potential implementation requirements. The San Diego court stated that some staff training on the new rule would be required, additional counter time working with self-represented parties would be expected, and procedures for handling noncomplying filings would need to be created. The Orange court pointed out that, because the new formatting rule incorporates existing guidelines, "training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs." The Los Angeles court does not believe any additional training will be required. It appears from these comments that any potential implementation requirements would be minimal and should not present a barrier to adoption of the new rule.

Attachments and Links

1. Cal. Rules of Court, rule 8.815, at page 7
2. Chart of comments, at pages 8–11

Rule 8.815 of the California Rules of Court is adopted, effective January 1, 2020, to read:

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).

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
1.	Committee on Appellate Courts of the Litigation Section of the California Lawyers Association Sacramento, CA	A	The Committee on Appellate Courts supports this proposal. The proposal addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants.	The committee notes the commenter's support for the proposal; no response is required.
2.	Horvitz & Levy By Andrea Russi, Senior Counsel San Francisco, CA	A	Currently it is unclear whether an appellate brief filed in superior court should follow the formatting rules for superior court filings or for appellate court filings (Rule 8.204). Under the new rule, the appellate division would be governed by rule 8.815 which adopts rule 8.883 setting forth the content and form of briefs (which largely mirrors 8.204). The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact.	The committee appreciates this comment and suggestion. The separate proposal to amend several rules governing the format of electronically filed documents in the Court of Appeal and the Supreme Court does not address the format of electronically filed documents in the appellate division. It creates no inconsistencies in the appellate division rules that must be addressed in this proposal. However, e-filing is increasing in the appellate division, and the committee agrees that rules for this process, including the format of electronically filed documents, should be considered in the future.
3.	Orange County Bar Association By Deirdre Kelly, President	A	Subject to the comments of the administering courts, this change clarifies the formatting for documents to be filed in the appellate division of the Superior Courts.	The committee notes the commenter's support for the proposal; no response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commenter's support for the proposal; no response is required.
5.	Superior Court of Orange County By Denise Parker, Program Coordinator/Specialist	NI	Agree with the proposal. The new rule of court was created to remedy the absence of formatting rules for the appellate division for superior courts. The new rule essentially states that the appellate division should follow the same guidelines as rule 8.883(c) which was written for filings in the Court of Appeal. 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? Yes. 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? Because the new format mimics existing guidelines, training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs.	The committee notes the commenter's support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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 • How well would this proposal work in courts of different sizes? The proposal should work for courts of all sizes. There should be no difference to the implementation plan.	
6.	Superior Court of San Bernardino County By Hon. Carlos M. Cabrera, Appellate Division Presiding Judge	A	No specific comment.	The committee notes the commenter's support for the proposal; no response is required.
7.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? 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), or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC, I, II, III & Lead positions. The expected number of hours are unknown; additional counter time working with self-represented parties would be expected. Procedures would have to be created for handling non-complying filings.	The committee notes the commenter's support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02
Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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. • How well would this proposal work in courts of different sizes? It would work well. Additional counter time working with self-represented parties would be expected.	

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

Item number:03

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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.)

Item number:04

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Appellate Procedure: Oral Argument in Appellate Division Appeals

Rules, Forms, Standards, or Statutes Affected
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

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 2, 2019

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

Executive Summary

The Appellate Advisory Committee recommends amending the rules regarding oral argument in limited civil and misdemeanor appeals to provide that oral argument will not be set in cases presenting no arguable issues, to state a procedure for waiving oral argument, and to establish a date of submission for appeals that are not set for oral argument. The committee also recommends 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, which originated from suggestions submitted by a presiding judge of an appellate division and a member of the committee, is intended to increase efficiency for courts and provide guidance for litigants.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 8.885 to provide that oral argument will not be set in appeals that raise no arguable issues and describe the procedure for waiving oral argument in advance;
2. Amend rule 8.886 to provide a date of submission for appeals that are not set for oral argument;
3. Approve new optional form APP-108 for litigants in limited civil appeals to use in waiving oral argument;
4. Approve new optional form CR-138 for litigants in misdemeanor appeals to use in waiving oral argument;
5. Revise form APP-101-INFO to reflect the amendments to rule 8.885 for litigants in limited civil appeals; and
6. Revise form CR-131-INFO to reflect the amendments to rule 8.885 for litigants in misdemeanor appeals and to correct errors.

The text of the amended rules and the new and revised forms are attached at pages 8–36.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, California Rules of Court, rules 8.800 through 8.936, were repealed and replaced in full effective January 1, 2009. Rule 8.885 was amended in 2010, but the amendments are not relevant to this proposal. Forms APP-101-INFO and CR-131-INFO have been revised from time to time, but no previous revisions have bearing on this proposal.

Analysis/Rationale

Rule amendments

Appeals that raise no arguable issues

Oral argument in limited civil and misdemeanor appeals is governed by rule 8.885. 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 under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende* appeals) even though the appeals raise no arguable issues.

In a *Wende* appeal, the defendant's appellate counsel finds no arguable issues after reviewing the record, and files a brief under *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.

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 recommends the amendment to subdivision (a) 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

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. The committee is advised that, 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 proposed amendments to rule 8.885(d) regarding waiver of argument are 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 waive argument by filing 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. In addition, 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.

Establishing 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

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, 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." (Cal. Rules of 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 approved, does not provide a time of submission. Therefore, the committee recommends 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. (Cal. Rules of Court, 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 recommends 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 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 proposed amendments 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 recommends 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 references 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 time 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.

The committee also recommends, in response to a comment (discussed below), that certain provisions in form CR-131-INFO that contain erroneous information regarding a misdemeanor defendant's right to self-representation be corrected.

Policy implications

The committee has identified no significant policy implications associated with this proposal.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. The committee received five comments. Two commenters (the Superior Court of Los Angeles County and the Orange County Bar Association) agreed with the proposal. Three commenters (the Criminal Appellate Section of the Los Angeles City Attorney's Office, the Superior Court of San Diego County, and the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 37–47.

The Criminal Appellate Section of the Los Angeles City Attorney's Office suggested that the proposal be modified by including a provision allowing each appellate division to opt out of the waiver provisions in proposed rule 8.885(d). The commenter explained that, because of the variation in rules and procedures for oral argument in appellate divisions across the state, the proposed waiver procedure might not achieve the desired efficiency for a particular court. As an example, the commenter pointed out that the Los Angeles Superior Court Appellate Division issues tentative rulings on the afternoon before oral argument.

The committee disagrees with modifying the proposed rule amendments to include an opt-out provision or otherwise provide that the rule is optional. The proposal establishes a procedure to enable parties to waive oral argument far enough in advance that the matter may be taken off calendar before the panel has prepared for the argument. The intent is not to preclude or make less efficient a practice such as issuing tentative rulings, or to preclude appellate divisions from establishing their own procedures that are not inconsistent with the rules of court.

The comment from JRS pertains to court operations. The committee has addressed it in the Fiscal and Operational Impacts section of this report.

In addition to providing comments on the proposal, the Superior Court of San Diego County requested revisions to the misdemeanor forms (CR-131-INFO and CR-138) to reflect accurately that there is no right to self-representation in misdemeanor appeals. (See e.g., *Martinez v. California* (2000) 528 U.S. 152; *In re Walker* (1976) 56 Cal.App.3d 225, 227; *People v. Scott* (1998) 64 Cal.App.4th 550.) Although the suggestions are outside the invitation to comment, the committee has made limited revisions to clarify that self-representation in misdemeanor appeals

is allowed only if the appellate division permits it. These are minor substantive revisions that are unlikely to create controversy and are necessary to correct erroneous information on the forms. (Cal. Rules of Court, rule 10.22(d).) The committee will reserve the more extensive revisions suggested by the commenter for future consideration.

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 unilaterally to 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 significant fiscal impacts from this proposal.

The Los Angeles court stated that implementation would include the development of docket codes in the case management system and a procedure to accept and process waivers. It expected that staff training on the process would be no more than two hours.

The San Diego court also indicated that staff training would be needed, but that it would be minimal for staff already familiar with procedures for appellate division appeals. The court would need to revise procedures, but not having to calendar and prepare for waived cases would save time and money.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS) expressed concern that the proposed date for implementation "is not feasible or is problematic" and added that given the potential for a number of new rules being implemented on the same timeline, "it would be advisable to give trial courts more time to implement a rule change that affects due process rights in both limited civil and misdemeanor appeals." In following up with JRS, the committee was advised that the comment regarding the proposed implementation date is not specific to this proposal. Rather, it is based on the broader issue of the number of rules that need to be implemented and the short time frame for implementation. The committee acknowledges the challenges courts, and particularly smaller courts, face in implementing a number of new and amended rules at the same time.

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.

Attachments and Links

1. Cal. Rules of Court, rules 8.885 and 8.886, at pages 8–9
2. Forms APP-101-INFO, APP-108, CR-131-INFO, and CR-138, at pages 10–36
3. Chart of comments, at pages 37–47

Rules 8.885 and 8.886 of the California Rules of Court are 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 7 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.

(4) If all parties do not 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.

(e) * * *

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 email 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; and
- 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" (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.

19 What happens after oral argument?

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.

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 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 (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

08/02/19

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.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- 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: _____ Email: _____

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: _____ Email: _____

Fax: _____

NOTICE

For all appeals in limited civil cases, the court schedules 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 will probably need a lawyer. You are allowed to represent yourself in an appeal in a misdemeanor case only if the appellate division permits you to do so. But appeals can be complicated, and you would 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 the appellate division permits you to represent 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 CR-105), to show that you are indigent. You can get form CR-105 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 CR-105) to show that you are indigent. You can get form CR-105 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 the appellate division has permitted you to represent yourself, 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, each party will have up to 10 minutes for argument, unless the court orders otherwise. If the appellate division has permitted you to represent yourself, 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

08-02-19

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: _____ Email: _____

b. Party's lawyer *(skip this if the court has permitted you to represent yourself in this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ Email: _____

Fax: _____

NOTICE

Except in cases that raise no arguable issues under *People v. Wende* (1979) 25 Cal.3d 436, in all misdemeanor appeals, the court schedules 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 Request to Waive Oral Argument *(check (a) or (b))*:

a. ☐ I am the appellant's attorney. I have read this form and I am requesting to waive oral argument. I understand that by signing this form, I am waiving the opportunity to appear in court and argue the case on behalf of my client. I have informed my client that I am waiving oral argument. 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.

b. ☐ The appellate division has permitted me to represent myself in this appeal. I have read this form and I am requesting to waive oral argument. **I understand that by signing this form, I am 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*

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
1.	Criminal Appellate Section, Los Angeles City Attorney's Office by Kent J. Bullard Supervising Deputy City Attorney Los Angeles	AM	In light of variation in procedures and rules governing oral argument in appellate divisions throughout the state – for example, the Los Angeles Superior Court Appellate Division provides tentative rulings the afternoon before an oral argument calendar (see Super Ct. L.A. County, Local Rules, rule 9.7(e)), whereas some other appellate divisions apparently do not provide tentative rulings – each appellate division should be permitted to determine whether new provisions governing oral argument waivers will achieve the intended goal of efficiency, and thus any new statewide rule should include a provision allowing each appellate division to opt out of provisions such as the waiver provisions in proposed Rule 8.885(d).	The committee notes the commenter's agreement with the proposal if it is modified. The committee recognizes that appellate division procedures vary, but disagrees with making the waiver procedure optional. The proposed new provisions create a procedure for waiving oral argument in advance so that judges do not needlessly prepare for argument when the parties know ahead of time that they do not wish to argue. This does not preclude appellate divisions from issuing tentative rulings or developing other procedures that are not inconsistent with the rules of court.
2.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	AM	The JRS notes the following impact to court operations: • Proposed date for implementation is not feasible or is problematic. Given the potential for a number of new Rules of Court being implemented on the same timeline; it would be advisable to give trial courts more time to implement a rule change that affects due process rights in both limited civil and misdemeanor appeals.	The committee notes the commenter's agreement with the proposal if modified. Based on the response to a request for clarification, the committee understands that the comment regarding the proposed implementation date is not specific to this proposal. Rather, it is based on the broader issue of the number of rules that need to be implemented and the short time frames for implementation. The committee

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			This proposal would be workable for courts of all sizes.	acknowledges the challenges courts, and particularly smaller courts, face in implementing a number of new and amended rules at the same time.
3.	Orange County Bar Association By Deirdre Kelly President	A	No specific comment.	The committee notes the commenter's agreement with the proposal. No further response is required.
4.	Superior Court of Los Angeles County	A	**Does the proposal appropriately address the stated purpose?** Yes, the proposal appropriately addresses the stated purpose. **Are the proposed waiver forms helpful and should any other content be included?** Yes, the proposed forms are helpful. No additional information is required. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Implementation requirements would include the development of docket codes in the Case Management System and a procedure to accept and process waivers. Staff training on the process would be no more than 2 hours.	The committee notes the commenter's agreement with the proposal, and appreciates the commenter's answers to specific questions presented in the invitation to comment. No further response is required. The committee appreciates this feedback. The committee thanks the commenter for this information on implementation requirements.

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient.	
5.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	• Does the proposal appropriately address the stated purpose? Yes. • Are the proposed waiver forms helpful and should any other content be included? Yes, the form is helpful. Correct/revise the misdemeanor forms to accurately reflect that there is no right to self-representation in misdemeanor appeals. (See e.g., *Martinez v. California* (2000) 528 U.S. 152*; In re Walker* (1976) 56 Cal.App.3d 225, 227; *People v. Scott* (1998) 64 Cal.App.4th 550.) That being said, individual appellate divisions may, in their discretion, grant a misdemeanor appellant's request for self-representation (but as there is no right to self-representation, a misdemeanor appellant may not merely "elect" to be self-represented). Specifically, correct/revise CR-131-INFO as follows:	The committee notes the commenter's agreement with the proposal if modified and appreciates the responses to questions presented in the invitation to comment. The committee thanks the commenter and has made limited revisions to the forms to clarify that self-representation in misdemeanor appeals is allowed only if the appellate division permits it. These are minor substantive changes that are unlikely to create controversy. (Rule 10.22(d).) The committee will reserve the more extensive revisions suggested by the commenter for future consideration.

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			- Section 4 (Do I need a lawyer to appeal?): Replace first paragraph with: "You will likely need a lawyer to appeal. Appeals can be complicated, and there is no right to self-representation in misdemeanor appeals. The appellate division may appoint a lawyer to represent you on appeal or you may have to hire your own lawyer. If you would like to represent yourself on appeal, you must file a written request, which may not be granted. If you have any questions, about the appeal process, you should talk to a lawyer." Replace the first sentence of the second paragraph with: "If the appellate division grants your request to represent yourself, you must put your address, telephone number, e-mail address, and fax number (if available) on the cover of every document…." - Section 5 (How do I get a lawyer to represent me?): last paragraph, revise first sentence to read: "If you are not indigent or if the appellate division does not appoint a lawyer, you must hire a lawyer at your own expense unless the appellate division grants your request to	The committee has made a limited revision to this item. See response above. The committee has made this change. The committee declines to make this change because the current language of the form is not incorrect. The committee will reserve this suggestion for future consideration.

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

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			represent yourself." Delete "If you want a lawyer and". - Section 17 (What is a brief?): Replace "If you are not represented by a lawyer in your appeal" with "If the appellate division has granted your request to represent yourself." - Section 20 (What is oral argument?): Revise second paragraph to read: "If a party chooses to participate in oral argument, only his or her lawyer may participate in oral argument unless the appellate division has granted your request to represent yourself on appeal. Each party will have up to 10 minutes to argue, unless the court orders otherwise. Remember that the judges will already have read the briefs, so it is more important for a party to argue the most important issues or ask the judges if they have any questions." Correct/revise CR-138 as follows: - Top section – add that CR-138 must be served and accompanied by a proof of service and a copy must be served by someone who is not a party (see language in "Service and filing" in section 17 of CRC-131-INFO; APP-	The committee has made this change. The committee has made limited revisions to this item. See response above. The committee declines to make this change because the form would be inconsistent with other misdemeanor appellate forms. The committee will retain this suggestion for

	Commenter	Position	Comment	Committee Response
			109, and APP-109-INFO (What is Proof of Service?). - Section 1.b. – Replace parenthetical to read: "skip this if the party's request to represent themselves on appeal has been granted") - Section 2 – correct/revise to read: Please check ONE and initial: ☐ I am appellant's attorney. I have read this form and am requesting to waive oral argument. I understand that by signing this form, I am waiving the opportunity to appeal in court and argue the case on behalf of my client. I have informed my client that I am waiving oral argument. I also understand that if all parties waive oral argument and the … [same language as last sentence]" ☐ The appellate division has granted my request to represent myself. "I have read this form… [same language as current paragraph in section 2]" ___ (Initials) In addition to the aforementioned case law unequivocally holding that there is no right to self-representation in criminal appeals (*Martinez v. California* (2000) 528 U.S. 152*; In re Walker* (1976) 56 Cal.App.3d	future consideration of whether service information should be included on the forms. The committee has made a limited revision to this item. The committee has revised this item. The committee appreciates this additional supporting research. No further response required.

	Commenter	Position	Comment	Committee Response
			225, 227; *People v. Scott* (1998) 64 Cal.App.4th 550): - "Unlike the constitutional right of indigents to be represented by court appointed counsel in the trial court, representation on appeal is regarded as discretionary with all reviewing courts, except in rare cases in which appointment of counsel is required by statute." (*People v. Vigil* (1961) 189 Cal.App.2d 478, 480.) - "Counsel on Appeal" section of 6 Witkin, Cal. Crim. Law 4th Crim Appeal § 51 (2012): On application of the defendant, the appellate division must appoint counsel on appeal for any defendant convicted of a misdemeanor who is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction, if the defendant was represented by appointed counsel in the trial court. (C.R.C., Rule 8.851(a); see Judicial Council Form No. CR-133 [Request for Court-Appointed Lawyer in Misdemeanor Appeal].) Th[e] rule [that on application, the App. Div. must appoint counsel in a misdemeanor appeal…] clearly involves misdemeanor	

	Commenter	Position	Comment	Committee Response
			convictions that have certain adverse consequences, and the theory of *Douglas v. California* (1963) 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811, supra, § 35, although involving a felony appeal, is also applicable to convictions of *serious* misdemeanors. *In re Henderson* (1964) 61 C.2d 541, 39 C.R. 373, 393 P.2d 685, a conviction for lewd conduct in public (P.C. 647(a)) makes this extension for California: although *Douglas* involved a felony, a conviction under P.C. 647(a) also has serious consequences. "In addition to the sentence imposed a person convicted of violating that subdivision is disqualified from teaching in public schools and is required to register with a law enforcement agency. … [U]pon the reinstatement of his appeal the principle enunciated in *Douglas* is applicable, and he is entitled to have an attorney assigned to represent him in the further proceedings." (61 C.2d 543.) In making the determination as to the seriousness of misdemeanor convictions, the courts have held that punishment for a misdemeanor battery is of serious consequence, entitling the defendant to appointed counsel on	

	Commenter	Position	Comment	Committee Response

			appeal.
			(People v. Wilson (1977) 72 C.A.3d Sup p. 59, 62, 140 C.R. 274 [fine not exceeding $1,000, punishment in county jail not exceeding 6 months, or both].) However, counsel is not required on appeal of a misdemeanor traffic offense where the punishment consists only of a fine, even a substantial one, and no collateral consequences are involved. (*People v. Wong* (1979) 93 C.A.3d 151, 154, 155 C.R. 453 [$65 fine]; *People v. Batiste* (1980) 109 C.A.3d 328, 332, 167 C.R. 171 [$150 fine].)
			- Witkin, Cal. Crim. Law 4th Crim Appeal § 38 provides further explanation as to why there is "no right to self-representation" in criminal appeals.
			- The Appellate Division Best Practices Manual states the following relative to misdemeanor appeals:
			  - Appellate Division is in a position to require counsel on appeal; no *Faretta* right to self-representation in misdemeanor appeal, *Faretta v. California* (1975) 422 U.S. 806
			  - CRC, Rule 8.851: Sixth Amendment right to effective assistance of counsel on appeal	

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			Answers to additional questions: • Would the proposal provide cost savings? If so, please quantify. Yes. Amount unknown. It would save time & money to not have to calendar/prepare for these 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? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working with appellate division appeals. Procedures would need to be revised to indicate the change. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	The committee thanks the commenter for the responses to these questions. The committee appreciates this feedback. The committee thanks the commenter for this information on implementation requirements.

SPR19-04

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)

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

	Commenter	Position	Comment	Committee Response
			Yes. • How well would this proposal work in courts of different sizes? It would work very well.	

Item number:05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

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

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

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 2, 2019

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

Executive Summary

The Appellate Advisory Committee recommends amending the rule that governs the length of briefs in civil cases in the Court of Appeal to reduce the maximum length of petitions for rehearing and answers to those petitions from 14,000 words to 7,000 words for briefs produced on a computer, and from 50 pages to 25 pages for briefs produced on a typewriter. This change, which is based on suggestions from appellate practitioners to consider reducing word limits for all types of briefs filed in the Court of Appeal, is intended to establish limits on briefing that reflect the limited scope of petitions for rehearing in unlimited civil cases.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 8.204, to add a new paragraph 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; and

2. Amend rule 8.268, the rule that governs rehearing in the Court of Appeal, to cross-reference the maximum length provisions in rule 8.204 for the petition and answer.

The text of the amended rules is attached at page 5.

Relevant Previous Council Action

In 2002, as part of a project to rewrite and reorganize the appellate rules, the Judicial Council added a word count as an alternative to a page count for measuring the length of a brief. The existing 50-page limit for a brief produced on a typewriter was retained, and the approximate equivalent of 14,000 words for a brief produced on a computer was added. The rule governing the contents and form of briefs in the Court of Appeal was renumbered in 2007. There is no other previous council action with respect to the length of briefs in the Court of Appeal that is relevant to this proposal.

Analysis/Rationale

The Appellate Advisory Committee recommends amending 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 to reduce by 50 percent the permissible length of petitions for rehearing and answers to those petitions in unlimited civil appeals.[1] The new provision 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 a material omission or misstatement of fact or a material misstatement of the law in the court's decision, or the court's decision is based on an issue that was not raised or briefed by the parties, or 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. The court already is familiar with the case, so the petition need not include a summary of the factual and procedural background of the case. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee expects that reducing the permissible length of petitions for rehearing will assist courts by decreasing the time Court of Appeal justices must spend 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 recommends amending rule 8.268, which governs rehearing in civil appeals in the Court of Appeal. Currently, rule 8.268(b)(3) provides: "The petition and answer must comply with the

[1] The proposed new length limits for briefs would not apply to rehearing in criminal cases or juvenile cases. (See rules 8.360(b) and 8.412(a)(3).) The new limits also would not apply to rehearing in limited civil and misdemeanor appeals. (See rule 8.883(b).)

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).

Policy implications

The committee has identified no significant policy implications associated with the recommended rule amendments.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Five individuals and organizations submitted comments on this proposal. All five commenters agreed with the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 6–9.

Alternatives considered

Under a broader original project description on the committee's annual agenda, the committee considered whether to propose reduced length limits for other types of briefs in civil appeals.[2] However, the committee recognizes that the topic is complicated 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. Any downsides—a possible increase in applications to file an overlong brief—seem minimal.

In addition, the committee considered where 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 word limit for briefs, the committee recommends 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.

---

[2] The topic is timely because, effective July 1, 2019, the U.S. Supreme Court adopted rules reducing the length of merits briefs filed by the parties, excluding reply briefs, from 15,000 words to 13,000 words. The Court retained the existing 6,000-word limit for reply briefs. See U.S. Supreme Court Rule 33(g)(v)–(vii), at *https://www.supremecourt.gov/filingandrules/2019RulesoftheCourt.pdf*.

Attachments and Links

Rules 8.204 and 8.268 of the California Rules of Court are 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) * * *

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by John A. Taylor, Jr. President Burbank	A	As the current president of the California Academy of Appellate Lawyers, I'm writing on behalf of its membership to support SPR19-05 (Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases). The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy supports the proposed rule change, which shortens the current word limit for petitions for rehearing and answers in unlimited civil appeals. Presently petitions for rehearing and answers can run to 14,000 words without leave of court, the same length as briefs on the merits. That may lead some practitioners and unrepresented parties to the erroneous conclusion that a rehearing arguments may typically be as detailed as the merits arguments or even to repeat merits arguments that the court has already considered.	The committee notes the commenter's support for the proposal and appreciates the comment. No further response required.

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

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
			Reducing the length limitation to 7,000 words confirms what is already known to experienced practitioners: that rehearing petitions should be focused and not mere repetition of the merits briefing. Even in a complex case, rarely would a rehearing petition need to be longer than 7,000 words but, in those unusual cases, permission may be sought to file a longer petition. We appreciate the opportunity to present these comments for consideration by the Judicial Council.	
2.	Orange County Bar Association by Deirdre Kelly President Newport Beach	A	The Orange County Bar Association believes that the answer to both requests for specific comments is "yes." Given the purpose of petitions for rehearing, it is unnecessary for these petitions to be as long as the underlying merits briefs.	The committee notes the commenter's support for the proposal and appreciates the comment. No further response required.
3.	John Schreiber Certified Appellate Specialist Benicia, California	A	Petitions for rehearing are meant to address specific, focused issues rather than reargue the entire appeal. The provision to allow for petitions exceeding the word limits should address instances in which greater length is necessary.	The committee notes the commenter's support for the proposal and appreciates the comment. No further response required.

SPR19-05
Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing? Unknown. The briefs are filed in the Court of Appeal. • Would the proposal provide cost savings? If so, please quantify. Unknown. The briefs are filed in the Court of Appeal. • 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? Unknown. The briefs are filed in the Court of Appeal. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Unknown. The briefs are filed in the Court of Appeal. No additional comments.	The committee notes the commenter's support for the proposal. No further response required.

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

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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

	Commenter	Position	Comment	Committee Response
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	No specific comment.	The committee notes the commenter's support for the proposal. No further response required.

Item number:06

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 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): Eric Long, 415-865-7691, eric.long@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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title

Appellate Procedure: Uniform Formatting Rules for Electronic Documents

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252

Recommended by

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

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

August 6, 2019

Contact

Eric Long, 415-865-7691
eric.long@jud.ca.gov
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee propose revising several rules of the California Rules of Court to make uniform the formatting guidelines for electronic documents filed in appellate courts. The rules currently lack various requirements established by local rule. Moreover, most local rules differ in their requirements and scope. By establishing uniform rules for all appellate courts, this proposal will ease the burden on filers caused by differing formatting rules. The proposal originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

Recommendation

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of Court:

1. Rule 8.40, to limit its scope to cover requirements for documents filed in paper form;

2. Rule 8.44(c), to:

    - Allow a court to require by local rule the submission of an electronic copy of a paper filing; and
    - Delete references to local court requirements for electronically filed documents, because e-filing is now mandatory and the format of electronic documents is addressed in rule 8.74;

3. Rule 8.46, to update a cross-reference to rule 8.40 (paper format) and to add a cross-reference to rule 8.74 (electronic format);

4. Rule 8.71, to impose mandatory electronic filing with some limited exceptions, including those established by the *Supreme Court Rules Regarding Electronic Filing*;

5. Rule 8.72, to set out the e-filing responsibilities of courts and electronic filers, and to add an advisory committee comment regarding an electronic filer's responsibilities not to harm the court's electronic filing system or other users of that system;

6. Rule 8.74, to establish uniform formatting rules for electronic documents filed with the appellate courts, and to implement formatting requirements drawn from some best practices developed among the various appellate courts through their local rules and from courts' experience reviewing electronic documents. The amendments to rule 8.74 prioritize uniformity, readability, and user-friendly formatting requirements, as follows:

    - Subdivision (a) addresses format and formatting requirements for all electronic documents;
    - Subdivision (b) sets out additional formatting requirements for documents prepared for electronic filing in the reviewing court, such as font, line spacing, margins, page alignment, and hyperlinks;
    - Subdivision (c) specifies formatting requirements for certain documents, including briefs, requests for judicial notice, appendixes, agreed statements and settled statements, reporters' transcripts and clerks' transcripts, exhibits, and sealed and confidential records;
    - Subdivision (d) provides that this rule prevails over other formatting provisions;

7. Rules 8.77 and 8.78, to make technical changes to existing cross-references;

8. Rule 8.204(b), to provide formatting requirements for briefs filed in paper form; and

9. Rule 8.252, to establish the procedure for seeking judicial notice of a matter, and to reflect the presumption of electronic filing unless an exemption applies.

The text of the amended rules is attached at pages 13–23.

Relevant Previous Council Action

Over the past three decades, the Judicial Council has regularly acted to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Sen. Bill 367; Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320). In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 to all appellate courts. Effective January 1, 2016, the Judicial Council adopted an initial round of technical rule amendments to address language in the rules that was incompatible with statutes and rules governing electronic filing and service and with e-business practices in general.

Analysis/Rationale

Although electronic filing is now common practice in California's appellate courts, the standards and requirements in the courts vary widely, consisting of a patchwork of differing local rules and formatting guidelines. The intent of these proposed amendments is to foster uniformity among the courts. The committees looked for best practices already in place in the appellate courts and proposed changes based upon the courts' experiences to date with electronic filings. The amendments are intended to improve legibility, readability, and functionality of electronic filings on monitors, screens, and ebook readers used by the bench, bar, and public. Finally, the amendments to rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 aim to achieve internal consistency—to the extent practicable—between existing rules for paper filings and electronic filings.

Policy implications

Because the appellate courts implemented electronic filing at different times, the rules governing electronically filed documents differ greatly between the districts. For the benefit of the courts, practitioners, and litigants, this proposal institutes mandatory electronic filing, and establishes consistent statewide formatting requirements for the appellate courts.

Comments

In total, 18 individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, 2 indicated that they agreed with the proposal if modified, and 12 did not indicate a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules. (Four of the 12 indicated that they were against one specific provision: the proposed ban on Times New Roman font.) Several comments were extensive and included responses to the questions asked by the committees and suggestions for modifying the proposal. Broadly speaking, the comments addressed three areas: (1) rule language, scope, and clarity; (2) technology; and (3) page layout and content.

A chart of the comments received and the committees' responses is attached at pages 24–59.

Rule language, scope, and clarity

Rule 8.40's exceptions and cross-references to other rules. Two commenters asked for clarity on rule 8.40(a), which as circulated for public comment addressed the form of filed documents. One commenter noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the rule does not reference any specific exceptions. Another commenter indicated that subdivision (a) requires compliance with "the relevant format provisions" of this rule and other rules, but that it is not entirely clear which other format provisions are relevant to electronic filing.

Because the proposal used already existing rules to implement uniform formatting, subdivision (a) was duplicative of several other rules. Under the circumstances, the committees recommend that rule 8.40 be amended to reflect only cover requirements for paper documents, thereby eliminating potentially confusing cross-references to the rules concerning mandatory electronic filing, exceptions, and format provisions for paper documents. The committees also recommend amending rules 8.74 and 8.204 to make the few remaining cross-references easier to discern.

Rule 8.74's scope and complexity. Several commenters observed that, as circulated for public comment, rule 8.74(a) (Format of electronic documents) applied to all electronic documents, and as a result it imposed formatting requirements on documents not prepared for filing in the first instance in a reviewing court. The commenters noted that such documents—including appendixes, transcripts, trial exhibits, and other documents—likely will already have margins, text, and line spacing that cannot, or should not, be reformatted to comply with rule 8.74. The commenters suggested modifying the proposal to make clear that only certain parts of rule 8.74(a) apply to all documents filed in electronic form. The e-filing working group staff of the Supreme Court commented that the text-searchable portable document format (PDF) provision set out in rule 8.74(a)(1) required e-filers to convert rather than scan documents to ensure text searchability, but staff noted that certain documents, including handwritten documents, forms, and diagrams, may not be amenable to being "converted" by a means other than scanning, or if they can be converted to PDF without scanning a paper document, the PDFs may nevertheless not be text searchable.

Based on these comments, the committees propose expanding the proposal's exception in subdivision (a)(1) for documents that an electronic filer possesses only in paper form to include documents that cannot practicably be converted to a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic that is not primarily text-based. To clarify this allowance, the committees recommend adopting an advisory committee comment explaining subdivision (a)(1)'s exceptions. (See the comment to amended rule 8.74(a)(1), at page 21.)

The committees also recommend adding a new subdivision (b), "Additional formatting requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court." As its title indicates, new subdivision (b) outlines additional formatting requirements for documents prepared for electronic filing in the reviewing court, whereas subdivision (a) sets out the essential formatting requirements applicable to all electronic

documents. As modified after public comment, the rule treats documents prepared for filing in the reviewing court differently from documents created before the appeal, but it establishes several baseline formatting requirements applicable to all electronic documents. The committees recommend including an advisory committee comment explaining subdivision (b)'s scope. (See the comment to amended rule 8.74(b), at page 21.)

In response to public comments asking for additional clarity, the committees further propose adding to rule 8.74(b) each of the relevant formatting provisions in rules 8.40(c) and 8.204(b). The proposal circulated for public comment relied on cross-references for these requirements, which commenters found confusing. By adding each of the relevant formatting provisions to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs and petitions filed in paper form, the rules will more clearly state those formatting requirements applicable to electronic filings and those applicable to paper filings.

Sealed materials, manual filings, and paper copies. The e-filing working group staff of the Supreme Court identified a potential need for clarification in the provision concerning sealed and confidential records. Specifically, the staff offered more consistent terminology and suggested expanding the provision to address both the filing of pages that have redactions and the filing of documents with multiple pages omitted. One bar association commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings would be helpful.

The committees recommend implementing the suggestions from Supreme Court staff with minor changes. With respect to the bar association's request for more guidance on these issues, the committees will retain these comments for future consideration. If courts' and e-filers' experiences with electronic filing warrant action, the committee could address these provisions in the future. In some instances, the committees expect courts will continue to publish formatting tips and guidelines supplementing the uniform rules, and these publications may address the commenter's concerns.

Technical amendments. Four rules—one addressed in the invitation to comment (rule 8.204) and three others (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The proposed changes to rule 8.40 would make existing cross-references in rules 8.46 and 8.204 concerning cover requirements inaccurate. The committees recommend minor changes to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for documents filed in electronic form. Technical amendments to rules 8.77(a)(3) and 8.78(a)(2)(B) are necessary because of moving the electronic-filer-responsibilities provision into rule 8.72(b)(2) from rule 8.74(a)(4).

Suggested changes to rules outside the proposal. Two commenters noted that other rules related to electronic filing were not part of the proposal. One commenter suggested updating all existing provisions relating to electronic filing, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new

authorities (rule 8.254). The comment from the e-filing working group staff of the Supreme Court noted that the proposal does not amend rule 8.78(a)(2)(B)'s provision concerning consent to electronic service. The equivalent rule for the trial court, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. The committees recommend addressing this issue in part by adding rule 8.74(a)(9)(A), which would provide that "inclusion of a fax number or email address on any electronic document does not constitute consent to service by fax or email unless otherwise provided by law."

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, the committees will retain the commenters' suggestions concerning other rules in title 8 for future consideration. At this time, the committees recommend only the technical amendment to update the existing cross-reference in rule 8.78. The committees will consider possible changes to rule 8.78's consent and electronic service provisions during the winter rule cycle.[1] As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, the committee will consider additional changes if experience with electronic filing warrants amendments to these other rules.

Technology

File-size restrictions. Several commenters who expressed support for the proposal questioned rule 8.74's 25-megabytes file-size restriction. These commenters also asked whether the 300-page limit for certain appendixes was necessary if it is possible for e-filers to prepare those volumes within the 25-megabytes file-size restriction, and questioned the wisdom of requiring manual filing for filings containing over five volumes when only one court has such a volume limitation in place.

The committees considered deferring action on the file-size restriction and leaving the limits to the courts. However, the committees recommend ultimately retaining the proposal's 25-megabytes file-size restriction. The principal reason not to defer action on the file-size restriction is that the 25-megabytes limit is already uniform across the state by local rule. Concerns were raised about establishing a rule with a file-size limit when capacity may change. Although there are some drawbacks to codifying technological parameters such as file size when technological changes could outpace the Judicial Council's rules cycles, ultimately, the motivating purpose of this proposal is uniformity. That goal would be lost if each court were permitted to set unique file-size limits on e-filers. Although commenters suggested that an increased file size might be possible, none indicated that the existing 25-megabytes restriction was unworkable or regularly compromised their electronic filings.

[1] California Rules of Court, rule 8.78(a)(2)(B) still provides: "The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule [8.72(b)(2)], unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice."

In response to the comments, the committees made two minor changes to the proposal concerning multiple-volume filings and manual filings. First, the committees modified rule 8.74(a)(5) to permit electronic filings that exceed the 300-page limit applicable to certain types of documents (e.g., rule 8.124(d)(1) (appendixes), rule 8.144(b)(6) (clerks' and reporters' transcripts), and rule 8.144(g) (agreed or settled statements)). Because an electronic filing may contain multiple documents or volumes, the proposal would allow electronic filings comprising multiple volumes—each 300 pages or fewer—as long as each component complies with those rules' page limitations and the electronic filing does not exceed 25 megabytes. The proposed rule, as modified following public comment, acknowledges the 300-page limit for certain documents and provides that the individual components of an electronic filing must comply with the page limit of those other rules. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than 5 files. The committees recommend increasing the manual-filing restriction to 10 files because filings consisting of more than 5 files are common in complex cases. Under existing limits in the Appellate Court Case Management System (ACCMS), a 10-volume limit would not exceed the file-size restrictions currently in place, and the increase from 5 to 10 will relieve electronic filers from the burden of manual filing in more cases.

Color component prohibition. Two commenters who agreed with the proposal if modified asked whether rule 8.74's prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. These commenters emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment erroneously indicated that color components were not supported in ACCMS. The committees have since confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, the committees recommend permitting electronic documents with color components as long as they do not exceed the file-size limit of 25 megabytes, as provided by amended rule 8.74(a)(8). Although the color cover provisions of rule 8.40, as modified, apply only to paper filings, the committees recommend expressly prohibiting color covers for electronic documents to avoid unnecessarily large file sizes where color covers are not required.

Based on the public comments and the allowance for electronic filings with color components, the committees modified the proposal to delete the references to PowerPoint and "documents containing photographs or any color component" in rules 8.74(a)'s manual filing provision. The provision would still specify a format for manually filed photographs, because color photographs may require manual filing on electronic media if the file exceeds 25 megabytes. At the Joint Appellate Technology Subcommittee meeting on July 1, 2019, subcommittee members expressed concerns about original electronic files when an e-filer has to convert the format of an electronic media file for filing. Based on this concern, the committees modified the proposal to add a provision that requires an electronic filer to retain the original electronic media file if it must be converted to a required format for manual filing.

Filing problems. One commenter requested that rule 8.72's court-responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address deadlines or extensions of time in any notice required by the provision. The committees have declined to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by a filing problem, on receipt of notice of the problem, to seek relief from the court. Because existing rules already address exemptions from electronic filing (rule 8.71(d)) and a clerk's rejection of documents for filing based on noncompliance with applicable filing requirements (rule 8.77(b)), the committees chose to eliminate the proposed provision circulated as 8.74(d), which also addressed these issues. If future experience supports reallocating responsibility from electronic filers to the courts, the committees will reconsider the provisions concerning deadlines and rejection or correction of noncompliant electronic filings.

Virus and harmful computer code requirement. The appellate practice section of a bar association protested that rule 8.72(b)'s "all reasonable steps" requirement for electronic filers was likely to cause confusion.[2] The commenter suggested that rule 8.72(b)(1) be rewritten to state that "[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."

Based on this comment, the committees recommend clarifying an e-filer's responsibilities with an advisory committee comment advising electronic filers that an absence of intent to harm is insufficient to comply with the subdivision. The committees did not want inadvertently to condone willful neglect or recklessness, but rather want to encourage e-filers to take affirmative steps to avoid causing harm. The committees recommend giving an example of a reasonable step electronic filers can take to ensure that a filing does not contain harmful computer code in the advisory committee comment to subdivision (b)(1).

Hyperlinks. In response to the questions presented in the invitation to comment, some commenters indicated that "hyperlinks" might not be commonly understood, but one court stated that the term is sufficiently clear and does not warrant further explication. Another commenter noted that rule 8.74 encourages the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendixes.

Based on these comments, the committees recommend amending the hyperlinks provision to include appendixes and exhibits. (See Amended Cal. Rules of Court, rule 8.74(b)(5).) With respect to defining the term *hyperlinks*, the committees concluded that concerns about the clarity of the term were unwarranted because the term is reasonably well known and because use of

[2] The relevant provision of rule 8.72 would provide: "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."

hyperlinks is encouraged but not required. The committees, however, support the courts' publishing instructions on how to create hyperlinks.

Page layout and content

Several comments addressed formatting standards, including page numbering, bookmarking, font, line spacing, page alignment, and margins. With respect to documents prepared for original filing in the reviewing courts, several commenters expressed preferences or concerns about font styles and size, footnote size, use of emphasis, line spacing, page alignment, and margins.

Page numbering. The proposed pagination rule, rule 8.74(a)(2), is consistent with the requirements set by local rules around the state. Despite the existing uniformity, one commenter advocated for the use of roman numerals for prefatory pages, such as tables of contents and tables of authorities. According to the commenter, using separate pagination for tables is superior to consecutive page numbering that the courts currently require by local rule because the pagination of the main document (e.g., brief or petition) can be finalized before any tables are created. The committees considered this comment but declined to allow for separate numbering systems for prefatory pages and the main document. As a court commenter supporting the pagination requirement noted, consecutive, all-arabic pagination allows courts and parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of matching page numbers to an electronic page counter justifies any burden on electronic filers imposed by the pagination requirement. The committees understand that, at least at present, an electronic page counter cannot be reset to match the page number when different page numbering systems are employed in a document. The committees considered allowing e-filers to place tables at the end of a document to avoid problems filers may face when they create tables of contents and authorities under this pagination rule. The committees maintained the provision as circulated, because the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

Bookmarking. Commenters uniformly wrote in favor of requiring bookmarks in electronic documents. Two commenters, however, suggested relaxing the proposed requirements. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time—where bookmarks might not be as helpful to readers. Another commenter requested that the technical requirement for setting bookmarks to retain a reader's selected zoom setting be voluntary, instead of mandatory, because existing software requires several mouse clicks to set each and every bookmark. The committees considered these requests but chose not to change the bookmarking provision. Creating bookmarks for shorter documents will not be labor-intensive, and if the zoom-level requirement were merely voluntary, many e-filers would rely on default settings that do not preserve a reader's preferred view. Although the bookmarking requirements will require e-filers to spend additional time preparing their documents for filing, the utility of bookmarks for readers outweighs the burdens placed on e-filers.

Font. As circulated for public comment, the proposed amendments to rule 8.74 required a proportionally spaced serif font such as Century Schoolbook and expressly prohibited the use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two more commenters questioned whether the prohibition on this particular font, which itself is a proportionally spaced serif font, was necessary. Just one commenter supported banning Times New Roman, but that commenter suggested that if Times New Roman were not permitted, filers who do not have Century Schoolbook font installed may choose an even less legible font. Based on these comments, the committees removed the proposal's prohibition on Times New Roman. However, the committees retained the proposal's stated preference for Century Schoolbook, because it is considered to be one of the most readable fonts and is preferred by most appellate judges in the state.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, the committees declined to modify the proposal based on the comments concerning font size.

Several commenters requested that sans-serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited because text in all caps is virtually unreadable. To promote readability, the committees recommend permitting use of sans-serif fonts in headings, subheadings, and captions and prohibiting the use of all capitals for emphasis. The committees considered but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like "Introduction," "Discussion," and "Conclusion." If experience shows that practitioners are using all caps for longer headings that are difficult to read, the committees will revisit the issue.

Line Spacing. One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read in conjunction with rule 8.204(b)(5), which defines single spaced as "six lines to a vertical inch." The committees modified the proposal to identify the requirement as "1.5 spacing," rather than "1-1/2 spacing," because word processors use a decimal to define the line spacing option between single-spaced and double-spaced. Additionally, as noted above, the proposal has since been modified to make rules 8.74 and 8.204(b) now stand alone, eliminating the inconsistency identified by the commenter. To the extent the commenter urged the committee to repeal the definition of *single-spaced* in the provision applicable to paper documents, the committees note that six lines to a vertical inch is a measurement for typewriters. Although line spacing on word processers can be set in various ways, typewriters have greater mechanical limitations. The committees anticipate that those seeking to file in paper form rather than electronically will frequently prepare their documents using a typewriter, and as a result, this archaic provision will continue to be instructive.

Page alignment. One commenter asked why rule 8.74 prohibits full-page justification and requested that the formatting rules allow for full justification with hyphenation. The committees

considered this comment but declined to modify the proposal's requirement for left-aligned text. The rule was taken from the Second Appellate District's electronic formatting guidelines, which recognize that left-aligned text is easier to read than justified text.

Margins. A commenter noted that Microsoft Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, the committees modified the proposal to clarify that documents not originally prepared for electronic filing in appellate courts such that the margin requirements for clerks' and reporters' transcripts are not directly affected by rule 8.74's margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. The committees also modified the proposal to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The committees retained the proposed 1-1/2 inch left and right margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. The committees decided to prioritize the readability and usability of a document (especially briefs and petitions) over the default settings of Microsoft Word, which Microsoft may change in the future and which users can adjust on their own. The committees will consider in the future margin requirements for transcripts after courts have more experience with mandatory electronic filing under the uniform rules, as well as if technological changes warrant revision.

Alternatives considered

This proposal initially focused on rules for exhibits and bookmarking, but was expanded in scope to include comprehensive formatting requirements for documents filed in electronic form. In addition to the initial focus and the alternatives considered in response to the public comments, the committees considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The committees concluded that the proposed changes were necessary to (1) institute mandatory electronic filing with limited exceptions, (2) make the appellate rules across the state consistent, and (3) eliminate confusion for appellate court litigants and practitioners who presently must comply with unique formatting requirements in each appellate district. The committees concluded that the proposed changes were necessary to give guidance and direction to e-filers, and to clarify the format requirements for documents filed in paper and electronic form.

Fiscal and Operational Impacts

The proposed rules are intended to make electronic formatting rules consistent in the appellate courts. The committees expect efforts will be needed to amend local rules to harmonize them with the amended rules.[3] The appellate courts likely will incur some cost to train staff on the new

[3] The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee expressed support for the proposal but raised a concern about the proposal's impact on court operations, namely the time needed to amend local rules. No stakeholders from the Courts of Appeal answered the timing question, so the committees expect that the appellate courts will have adequate time to amend their local rules before the January 2020 effective date.

rules and the procedures arising from them. No other costs or implementation challenges are anticipated.

Attachments and Links

1. Cal. Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252, at pages 13–23
2. Chart of comments, at pages 24–59

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court are amended, effective January 1, 2020, to read:

Rule 8.40. ~~Form of filed documents~~ Cover requirements for documents filed in paper form

(a) ~~Form~~

~~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).~~

~~(b)~~ Cover color

(1)–(2) * * *

(3) A paper brief or petition not conforming to (1) or (2) 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)~~ (b) Cover information

(1)–(2) * * *

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 8.46. Sealed records

(a)–(c) * * *

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

(1)–(2) * * *

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separately from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule 8.40~~(c)~~(b) if the record is in paper form or rule 8.74(a)(9) if the record is in electronic form, and that labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper form~~at~~, it must be placed in a sealed envelope or other appropriate sealed container.

(e)–(g) * * *

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 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 form and print form~~ats~~, 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.

Advisory Committee Comment

Subdivision (b)(1). One example of a reasonable step an electronic filer may take is to use a commercial virus scanning program. Compliance with this subdivision requires more than an absence of intent to harm the court's electronic filing system or other users' systems.

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) Formatting 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. In the limited circumstances in which a document cannot practicably be converted to a text-searchable PDF, the document may be scanned or converted to non-text-searchable PDF. 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. The printing of an electronic document must not result in the loss of document text, formatting, or appearance. The electronic filer is responsible for ensuring 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 thereafter be paginated consecutively using only arabic numerals (e.g., 1, 2, 3). 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 form and electronic form, the pagination in both versions must comply with this paragraph.

(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 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 form.

(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. Although certain provisions in the California Rules of Court require volumes of no more than 300 pages (see, e.g., rules 8.124(d)(1), 8.144(b)(6), 8.144(g)), an electronic filing may exceed 300 pages so long as its individual components comply with the 300-page volume requirement and the electronic filing 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 stating (a) the file number for that file and the total number of files for that document, (b) the volumes contained in that file, and (c) the page numbers contained in that file. (For example: File 2 of 4, Volumes 3–4, pp. 301–499.) 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 300, the cover of the second file must be page 301.) If a multiple-file document is submitted to the court in both electronic form and

paper form, 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 10 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 an electronic medium such as a flash drive, DVD, or compact disc (CD). When an electronic filer files with the court one or more documents on an electronic medium, 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 electronic media must comply with the format requirements of this rule.

(B) Electronic media files such as audio or video must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or mp4 format.

(C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf format.

(D) If an original electronic media file is converted to a required format for manual filing, the electronic filer must retain the original.

(7) *Page size*: All documents must have a page size of 8-1/2 by 11 inches.

(8) *Color*: An electronic document with a color component may be electronically filed or manually filed on electronic media, depending on its file size. An electronic document must not have a color cover.

(9) *Cover or first-page information*:

(A) Except as provided in (B), the cover—or first page, if there is no cover—of every electronic document filed in a reviewing court must include the name, mailing address, telephone number, fax number (if available), email address (if available), and California State Bar number

of each attorney filing or joining in the document, or of the party if he or she is unrepresented. The inclusion of a fax number or email address on any electronic document does not constitute consent to service by fax or email unless otherwise provided by law.

(B) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the electronic document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified under (A) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

(b) Additional formatting requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court

(1) *Font*: The font style must be a proportionally spaced serif face. Century Schoolbook is preferred. A sans-serif face may be used for headings, subheadings, and captions. Font size must be 13-points, including in footnotes. Case names must be italicized or underscored. For emphasis, italics or boldface may be used or the text may be underscored. Do not use all capitals (i.e., ALL CAPS) for emphasis.

(2) *Spacing*: Lines of text must be 1.5 spaced. Footnotes, headings, subheadings, and quotations may be single-spaced. The lines of text must be unnumbered.

(3) *Margins*: The margins must be set at 1-1/2 inches on the left and right and 1 inch on the top and bottom. Quotations may be block-indented.

(4) *Alignment*: Paragraphs must be left-aligned, not justified.

(5) *Hyperlinks*: Hyperlinks to legal authorities and appendixes or exhibits 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 if the hyperlink is to a legal authority, it should be formatted to standard citation format as provided in the California Rules of Court.

(c) Additional formatting requirements for certain electronic documents

(1) *Brief*: In addition to compliance with this rule, an electronic brief must also comply with the contents and length requirements stated in rule 8.204(a) and (c). The brief need not be signed. The cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge; and

(D) The name of the party that each attorney on the brief represents.

(2) *Request for judicial notice or request, application, or motion supported by documents*: When seeking judicial notice of matter not already in the appellate record, or when a request, application, or motion is supported by matter not already in the appellate record, the electronic filer must attach a copy of the matter to the request, application, or motion, or an explanation of why it is not practicable to do so. The request, application, or motion and its attachments must comply with this rule.

(3) *Appendix*: The format of an appendix must comply with this rule and rule 8.144 pertaining to clerks' transcripts.

(4) *Agreed statement and settled statement*: The format for an agreed statement or a settled statement must comply with this rule and rule 8.144.

(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 files 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 sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page or pages must identify the type of page or pages omitted. Each omission page must be paginated consecutively with the rest of the publicly

filed record. Each single omission page or the first omission page in a range of omission pages must be bookmarked and must be listed in any indexes included in the publicly filed record. The PDF counter for each omission page must match the page number of the page omitted from the publicly filed record. Separately-filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.

(d) Other formatting rules

This rule prevails over other formatting rules.

Advisory Committee Comment

Subdivision (a)(1). If an electronic filer must file a document that the electronic filer possesses only in paper form, use of a scanned image is a permitted means of conversion to PDF, but optical character recognition must be used, if possible. If a document cannot practicably be converted to a text-searchable PDF (e.g., if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text based), the document may be converted to a non-text-searchable PDF file.

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 declaration as an exhibit, the bookmark to the complaint might say "Exhibit A, First Amended Complaint filed 8/12/17."

Subdivision (b). Subdivision (b) governs documents prepared for electronic filing in the first instance in a reviewing court and does not apply to previously created documents (such as exhibits), whose formatting cannot or should not be altered.

Subdivision (c)(7). In identifying the type of pages omitted, the omission page might say, for example, "probation report" or "*Marsden* hearing transcript."

Rule 8.77. Actions by court on receipt of electronic filing

(a) * * *

(1)–(2) * * *

(3) *Transmission of confirmations*

The court must arrange to send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the

court under rule ~~8.74(a)(4)~~ 8.72(b)(2). The court or the electronic filing service provider must maintain a record of all receipt and filing confirmations.

(4) * * *

(b)–(e) * * *

Rule 8.78. Electronic service

(a) * * *

(1) * * *

(2) A party indicates that the party agrees to accept electronic service by:

(A) * * *

(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule ~~8.74(a)(4)~~ 8.72(b)(2), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

(3) * * *

(b)–(g) * * *

Rule 8.204. Contents and format of briefs

(a) * * *

(b) Format of briefs filed in paper form

(1)–(9) * * *

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40~~(b)~~(a). In addition to providing the cover information required by rule 8.40~~(c)~~(b), the cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge; and

(D) The name of the party that each attorney on the brief represents.

(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.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
1.	Jessica Coffin Butterick Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	I would agree with the new rules if modified. Please see my comments below. Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you're banning it, but there are lots of terrible system fonts out there. If you're going to ban TNR, please also ban Cambria, which is even worse, and will be people's next choice if they don't have Century Schoolbook installed on their machines. Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered "lines of text" that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the "1.5 lines" spacing option yields spacing of about 175% of point size, and many people seem to think that's what 1.5 spacing means. (See explanation at https://practicaltypography.com/line-spacing.html) On its own, that doesn't matter all that much, but it becomes a big problem if we're supposed to	The committees thank the commenter and note the support for the proposal if modified. The committees appreciate the commenter's concerns. The committees decline to recommend differing font sizes, or banning additional proportional-spaced fonts. Based on this and other comments, the committees have deleted the proposals' prohibition on the use of Times New Roman, but the committees have preserved the preference for Century Schoolbook, because it is considered to be one of the most readable fonts. The committees agree that headings should be added to the list of things that may be single-spaced, and made this change. To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have modified the proposed amendments to rules 8.74 and 8.204(b). The committees considered the commenter's concern about rule 8.204(b)(5)'s line spacing

	Commenter	Position	Comment	Committees Responses
			interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as "six lines to a vertical inch." Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter's document not attached to comment chart.] Or are we supposed to disregard rule 8.204(b)(5)? I can't tell. · Proposed rule 8.40(a) tells us we must comply with "relevant format provisions" of rule 8.204. This certainly seems relevant. · Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it's impossible to do so. It's possible to comply with rule 8.204(b)(5), even if it's not advisable. · Proposed rule 8.74(b)(1) tells us we must comply with 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)." I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn't	measurement, as well as the commenter's public comment submitted in advance of the Appellate Advisory Committee's open meeting, but determined that the line spacing provision for paper documents exists to assist those preparing documents using typewriters, where line spacing options are limited by mechanics. The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.

	Commenter	Position	Comment	Committees Responses
			comply with the 6-lines-per-vertical-inch definition of line spacing, the consequence is that we'll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that's better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule. Rule 8.74(a)(11) — Alignment Why can't paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we're going to regulate things like justification, while we're at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.) Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you're not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don't. For example: "Electronic filers must still comply with rule	The committees decline to recommend adding an allowance for justified alignment because left-aligned text is easier to read than justified text. Based on this comment, the committees have proposed adding a prohibition on the use of all capitals for emphasis but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like "Introduction," "Discussion," and "Conclusion." The committees thank the commenter for this input. Based on this and other comments, the committees have modified the proposal to clarify that rule 8.204(b) would not apply to electronic filings. The relevant requirements will instead be in rule 8.74.

	Commenter	Position	Comment	Committees Responses
			8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper filers." I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does "including the provisions in rule 8.204(b)(2), (4), (5), and (6)" refer to the requirements electronic briefs must also comply with? Or, since there's no comma after the word "format," is that text part of the "except for" clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out. Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don't need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don't know what the relevant portions of rule 8.204 are.	Based on this comment and others, the committees have modified the proposal to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.
2.	California Academy of Appellant Lawyers by John Taylor, Jr., President Burbank	A	As the current president of the California Academy of Appellate Lawyers, I'm writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing	The committees thank the commenter, and note the California Academy of Appellant Lawyers' support for the proposal.

	Commenter	Position	Comment	Committees Responses
			and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts' technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing. 1. File number/size limitation. Proposed rules 8.74(a)(5) & (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) "an electronic document consisting of more than	The committees appreciate the commenter's input and have modified the proposed multiple-file provision to allow an electronic filing if the combined volumes of an electronic filing satisfy the 25 megabytes file-size limit and the individual component volumes of the electronic filing comply with any applicable 300-page

	Commenter	Position	Comment	Committees Responses
			five files" must be manually filed (in electronic form, but manually rather than e-filed). In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file. Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.	requirement(s). The proposal also would amend the manual filing requirement for multiple files or volumes, changing the limit to 10 rather than 5. The committees will consider additional changes in the future if they are supported by technological changes.
			2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of "an electronic document with any color component." While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests	The committees agree that color components may be helpful, and have modified the proposal to allow for color components in electronic filings as long as the file complies with the file-size limit.

	Commenter	Position	Comment	Committees Responses
			that the courts may not wish to discourage documents with color that can make the document more useful to the court. The invitation to comment says that color "causes problems with ACCMS" (p. 4), but doesn't explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary. 3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.	The committees have confirmed that color does not cause problems for ACCMS, but that color components may cause loading problems because color components increase file size. The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts' experience with manual delivery of electronic media warrants additional action.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
			4. Paper copies We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked. In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.	The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings. No response required.
3.	Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer	NI	In regard to: "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." Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be	The committees appreciate the commenter's concern. Based on this and other comments, the committees have modified the proposal to allow

	Commenter	Position	Comment	Committees Responses
			resolved on its own rather soon or does another technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed? In regard to: "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." Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk's transcript assembly and therefore be in compliance of the rule.	for color components in electronic filings as long as the file complies with the file-size limit. The committees thank the commenter for this input. With respect to the commenter's suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk's and reporter's transcripts. To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74, the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Microsoft Word is not the only word processing software that practitioners use to create electronic filings, and default settings change and can be adjusted.

	Commenter	Position	Comment	Committees Responses
				Based on this and other comments, however, the committees have added a proposed subdivision to rule 8.74 providing that the margin provision applies to documents prepared for filing in the first instance in the reviewing court, not to documents like transcripts generated in the superior courts.
4.	Criminal Justice Legal Foundation by Kent Scheidegger, Legal Director and General Counsel Sacramento	NI	The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system. Proposed Rule 8.74(a)(2) quite reasonably requires that "[t]he electronic page counter for the electronic document must match the page number for each page of the document." * * * What is most remarkable about the rule's prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.	The committees thank the commenter for providing input on this proposal. The committees considered but declined to modify the proposal as suggested to permit separate numbering for prefatory pages. The proposal's pagination requirement implements rules that already exist in California's appellate courts. All six appellate districts and the Supreme Court use consecutive arabic-numbering as set forth in the proposal. The committees appreciate that numbering all pages, including preliminary pages such as tables, in this manner may require additional preparation time, but consecutive pagination allows courts and parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page numbers that match an

	Commenter	Position	Comment	Committees Responses
			CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted: (2) Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph. [The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]	electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.
5.	Jeffrey Ehrlich Ehrlich Law Firm Claremont	NI	I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA's "Leap from E-filing" publication, which	The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.

	Commenter	Position	Comment	Committees Responses
			in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable. First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires. Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face. When I started in appellate practice, Horvitz & Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.	No further response required. The committees appreciate the commenter's input on this issue. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions.
6.	Horvitz & Levy by Andrea Russi, Senior Counsel San Francisco	A	We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone. One suggestion:	The committees thank the commenter for this input and note the agreement with the proposal.

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

	Commenter	Position	Comment	Committees Responses
			The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
7.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	A	The JRS notes the following impact to court operations: • Requires development of local rules and/or forms. The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.	The committees appreciate the commenter's input and note JRS's support for the proposal.
8.	Hon. Jo-Lynne Lee Superior Court of Alameda County	NI	I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don't understand the reason why it should be prohibited.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.

	Commenter	Position	Comment	Committees Responses
			Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.	
9.	Lynn Loschin Senior Research Attorney Court of Appeal, Fourth Appellate District	NI	As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes. Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than scrolling to the bottom of the page, saves a great deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change. Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change. Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned.	The committees thank the commenter for providing input on this proposal. The committees note the commenter's support for 8.74's pagination requirements. The committees note the commenter's support for 8.74's bookmarking requirements, including retention of a reader's selected zoom setting. The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.

	Commenter	Position	Comment	Committees Responses
			I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going. I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.	The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions. See responses above.
10.	Steven Murray Sherman Oaks	NI	The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken. If any changes are needed (and I seriously doubt that), make them optional. Or better yes, as now, let each Division of the Court of Appeal or the Supreme	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman. The committees decline, however, to recommend allowing font sizes other than 13-point. The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.

	Commenter	Position	Comment	Committees Responses
			Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.	
11.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing "unless these rules provide otherwise" but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the "exceptions" to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by allowing "by local rule" for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).	The committees thank the commenter and note the OCBA's support for the proposal if modified. Based on this and other comments, the committees deleted the cross-references to exceptions in rule 8.40(a). With respect to rule 8.44(c)'s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principal goal of this proposal. However, the proposed requirement here applies only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings. With respect to amending additional rules in title 8 that are applicable to electronic filing, service, signatures, and other documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
				10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.
12.	Daniel Repp Sacramento	NI	I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned. * * * (1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far. * * * Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the	The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman. No response required. No response required.

	Commenter	Position	Comment	Committees Responses
			expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison). (5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done. * * * [The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]	The committees appreciate the commenter's input. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of its more limited readability. However, the committees have added an allowance for sans-serif fonts in headings, subheadings, and captions.
13.	Appellate Practice Section of the San Diego County Bar Association by Heather Guerena, Chair	NI	The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section	The committees thank the commentator for this input.

	Commenter	Position	Comment	Committees Responses
			has the following comments about those proposed changes: General Comments: The Invitation to Comment requested comments on these two general topics. 1. Does the proposal appropriately address the stated purposes? The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts' experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they	The committees appreciate this feedback.

	Commenter	Position	Comment	Committees Responses
			understand that these changes are designed to ease reading on electronic reading devices. Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself. 2. Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"? The terms "omission page" and "hyperlink" in particular may not be well-known to all electronic filers, especially those who have limited experience to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section's comments to specific proposed rule changes. Specific Comments:	The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council's Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers, and court personnel. CJER does not organize or provide education for practitioners. The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. Because hyperlinks are encouraged but not required, the committees decided not to define this reasonably well-known term. No response required.

	Commenter	Position	Comment	Committees Responses
			The Appellate Practice Section's specific comments to the proposed rule changes are as follows: Rule 8.40 No comments. Rule 8.44 No comments. Rule 8.71(a) No comments.	
			Rule 8.72 Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.	The committees thank the commenter for this input.
			Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also state something like: "Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended."	The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek appropriate relief from the court.
			Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires	The committees thank the commenter for this input. The committees decline to add a mental-

	Commenter	Position	Comment	Committees Responses
			each filer to "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." This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that "Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system."	state requirement to this provision. Based on this comment, however, the committees have recommended adding an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.
			Rule 8.74 Rule 8.74(a): The title to proposed Rule 8.74(a) is "Format requirements applicable to all electronic documents." Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed	The committees agree with the commenter that, as drafted and circulated for comment, the proposed amendments to rule 8.74 unintentionally encompassed documents that are not prepared for electronic filing in the first instance in the reviewing court. Based on this and other comments, the committees have made changes to the proposal, and have included an advisory

	Commenter	Position	Comment	Committees Responses
			in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to "Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court." Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, "All bookmarks must be set to retain the reader's selected zoom setting." This requirement is not likely to be understood by all users, especially those without experience with electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as "custom" and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to "inherit zoom." Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting for each bookmark, each such change requires a number of "clicks" to accomplish the change.	committee comment to make this requirement clearer. The committees appreciate the commenter's input on this proposal. The committees support the courts' publishing instructions on how to comply with the bookmarking requirement.

	Commenter	Position	Comment	Committees Responses
			The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of "inherit zoom" either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as "To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document." Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below. Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color components as follows: "Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format."	The committees appreciate the commenter's input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the proposal's bookmarking view voluntary. See response below. Based on this and other comments, the committees have modified this provision and the color component provision.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
			Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a "proportionally spaced serif face" font. The only example given of an acceptable font is "Century Schoolbook," and the only example given of a prohibited font is "Times New Roman." The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules.	Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman, but the committees have preserved the rule's preference for Century Schoolbook, which is considered to be one of the most readable fonts. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
			Rule 8.74(a)(12): This rule may cause some confusion as written. Because "hyperlink" is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified.	Based on this and other comments, the committees have clarified the provision relating to hyperlinks. Because hyperlinks are encouraged but not required, the committees chose not to draft a definition for a reasonably well-known term. The committees support the courts' publishing instructions on how to create hyperlinks.
			Also, it has been the experience of some members of the Appellate Practice Section that commercially available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked. Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be	The committees acknowledge the suggestion concerning vendors of hyperlink software and will forward it to appropriate Judicial Council staff for consideration.

	Commenter	Position	Comment	Committees Responses
			determined once the cost of any such software is known. Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary. This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as "volumes no larger than 25 megabytes." The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if the purpose of this rule is to limit the size of files by	Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for documents with color components. Under the modified provisions, manual filing would be required when a filing with a color component exceeds the file-size requirements or in other limited circumstances under the rule.

	Commenter	Position	Comment	Committees Responses
			limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5). At present, it appears that only the Third Appellate District restricts filers' ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents. Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not	No response required. The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the

	Commenter	Position	Comment	Committees Responses
			seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): "Except for cover pages, tables, or indices prepared for an appellate court, . . ." In addition, for each of 8.74(b)(3) and (5), the phrase "must comply with this rule" should be changed to "must comply with parts (a)(1) through (a)(7) of this rule . . . ." If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6). Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page.	relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74. The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration. The committees thank the commenter for this input. To the extent the commenter seeks additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
			Rule 8.204 No comment. Rule 8.252 No comment.	
14.	Superior Court of Los Angeles County	A	Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts. Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms. 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, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements include training for	The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question. Because hyperlinks are encouraged but not required, the committees have chosen not to define this reasonably well-known term. The committees support courts' publishing instructions on how to create hyperlinks. The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question.

	Commenter	Position	Comment	Committees Responses
			staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted. • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed.	The committees appreciate the commenter's input on this question.
15.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	• Does the proposal appropriately address the stated purpose? Yes. • Are there terms that need further reference or definition, such as the words "omission page" or file-type references like ".mp3" or "hyperlink"? No. • Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be very minimal	The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question. The committees appreciate the commenter's input on this question.

	Commenter	Position	Comment	Committees Responses
			training for staff. Possible need to adopt procedures for non-compliance. • Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes. No additional comments.	The committees appreciate the commenter's input on this question.
16.	E-filing working group staff of the Supreme Court	NI	Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07 **1) Rule 8.74(a)(1), requirement to "convert" paper documents**: The description of the proposed rule states, "To ensure text searchability, the proposal requires a filer to 'convert' a paper document to electronic form, *rather than scanning a printed document*." (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being "converted" by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g.,	The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposed amendments to rule 8.74 to address PDF conversion and scanning of paper-only documents. The committees also have proposed adding an advisory committee comment on this provision addressing the types of documents mentioned by the commenter.

	Commenter	Position	Comment	Committees Responses
			having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows: 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. Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based. The printing of an electronic document must not. . . .	
			2) Rule 8.74(b)(7), additional requirements for sealed and confidential records: The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In order to maintain the same page numbering in the two versions of the document, there should be an	Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.

	Commenter	Position	Comment	Committees Responses
			"omission page" for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows. Proposed Rule 8.74(b)(7) as revised: *Sealed and confidential records:* Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47. *Sealed and confidential records*: Under rule 8.45(c)(1), electronic records that are sealed or confidential ~~or under seal~~ must be filed separately~~.~~ from publicly filed records. If one or more pages are omitted from a ~~source document~~publicly filed record and filed separately as a sealed or confidential	The committees appreciate the suggested changes submitted by the e-filing working group staff, and have recommended adopting most of them.

	Commenter	Position	Comment	Committees Responses
			record, an omission page or pages must be inserted in the ~~source document~~publicly filed record at the location of the omitted page or pages. The omission page(s) must ~~identify~~provide a title for the ~~type of pages~~page(s) omitted~~.~~ that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the ~~source document, it~~publicly filed record, must be bookmarked, and ~~it~~ must be listed in any indexes included in the ~~source document.~~publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page~~.~~(s). Separately filed sealed or confidential ~~or sealed~~ records must comply with this rule and rules 8.45, 8.46, and 8.47. **3) Rule 8.78(a)(2)(B), consent to electronic service**: The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 & 9, available at https://jcc.legistar.com/View.ashx?M=F&ID=6612001&GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3) Must or should rule 8.78(a)(2)(B) be similarly revised?	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.

SPR19-07
Appellate Procedure: Uniform Formatting Rules for Electronic Documents
(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

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

	Commenter	Position	Comment	Committees Responses
17.	Kristin Traicoff Law Office of Kristin Traicoff Sacramento	NI	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: "Each electronic document must include..." It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.	The committees thank the commenter for providing input on this proposal. The proposal's bookmarking requirements apply to documents with certain components. The bookmarking requirements are intended to aid readers of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks for readers justifies any burden on filers imposed by this requirement.
18.	Norm Vance Berkeley	NI	The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on Times New Roman.

Item number:07

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Service Copy of Petition for Review
Amend California Rules of Court, rule 8.500

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

Staff contact (name, phone and e-mail): Eric Long, 415-865-7691, eric.long@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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Appellate Procedure: Service Copy of Petition for Review

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.500

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 12, 2019

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. 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 with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

Recommendation

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of

Court, rule 8.500(f)(1) to require a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

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

Relevant Previous Council Action

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerk of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

Analysis/Rationale

Recognizing that the Courts of Appeal are automatically receiving copies of petitions for review when they are filed electronically, this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. 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 current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the Courts of Appeal.

Policy implications

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

Comments

This proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

Alternatives considered

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

Fiscal and Operational Impacts

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

Rule 8.500 of the California Rules of Court is amended, effective January 1, 2020, to read:

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) * * *

SPR19-08
Appellate Procedure: Service Copy of a Petition for Review
(Amend Cal. Rules of Court, rule 8.500)

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

	Commenter	Position	Comment	DRAFT Committees Responses
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter's support for the proposal.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	•Does the proposal appropriately address the stated purpose? Yes. The committees also seek comments from courts on the following cost and implementation matters: •Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. •What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working the counter in Appeals. Procedures would need to be revised to indicate the change. •Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committees note the commenter's support for the proposal, and appreciate the commenter's input on these questions.

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

SPR19-08
Appellate Procedure: Service Copy of a Petition for Review (Amend Cal. Rules of Court, rule 8.500)

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

	Commenter	Position	Comment	DRAFT Committees Responses
			•How well would this proposal work in courts of different sizes? Fine.	

Item number: 08

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Jury Instructions: Revisions to the Judicial Council of California Criminal Jury Instructions (CALCRIM)

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

Staff contact (name, phone and e-mail): Kara Portnow, 865-4961, kara.portnow@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 19, 2018
Project description from annual agenda: Maintenance, New Instructions and Expansion into New Areas, Technical Corrections

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Jury Instructions: Revisions to Criminal Jury Instructions

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

Recommended by
Advisory Committee on Criminal Jury Instructions
Hon. Peter J. Siggins, Chair

Agenda Item Type
Action Required

Effective Date
September 24, 2019

Date of Report
August 8, 2019

Contact
Kara Portnow, 415-865-4961
kara.portnow@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving the revised and revoked criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the September 2019 Supplement of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective September 24, 2019, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to CALCRIM Nos. 101, 200, 362, 376, 402, 403, 511, 520, 524, 540A, 540B, 540C, 548, 561, 600, 703, 732, 860, 862, 863, 875, 970, 982, 983, 1128, 1191A, 1502, 2100, 2101, 2102, 2503, 2572, 2651, 2652, 2720, 2721, 2900, 2902, 3130, and 3145;

2. Technical changes to CALCRIM Nos. 123, 208, 590, 810, 890, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1070, 1080, 1081, 1082, 1090, 1091, 1101, 1123, 1203, 2306, and 3406;
3. Revocation of CALCRIM Nos. 541A, 541B, and 541C; and
4. Updates to the Introduction to Felony-Murder Series.

A table of contents and the full text of the revised instructions are attached at pages 26–306.

Relevant Previous Council Action

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

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM.* The council approved the last *CALCRIM* release at its March 2019 meeting.

Analysis/Rationale

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

Below is an overview of some of the proposed changes.

Felony Murder (CALCRIM Nos. 540A–540C and 541A–541C)

Senate Bill 1437 (Stats. 2018, ch. 1015) substantially changed accomplice liability for felony murder. As a result of these legislative changes, the instructions for felony murder need to be revised. CALCRIM No. 540A is the instruction for felony murder when the defendant is charged as the actual killer. This instruction required the least revision because felony murder liability for the actual killer did not change. CALCRIM Nos. 540B and 540C required more revisions and now contain the added elements for intent to kill (Pen. Code, § 189(e)(2)), major participant (Pen. Code, § 189(e)(3)), and the peace officer exception (Pen. Code, § 189(f)). The committee also proposes revoking CALCRIM Nos. 541A, 541B, and 541C. These instructions relate to second degree felony murder, which the new legislation effectively eliminated by adding subdivision (a)(3) to Penal Code section 188. The committee has proposed updates to the Introduction to Felony-Murder Series to explain these changes.

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

Natural and Probable Consequences (CALCRIM Nos. 402 and 403) and *Attempted Murder* (CALCRIM No. 600)

Senate Bill 1437 added subdivision (a)(3) to Penal Code section 188. This subdivision contains the following statement: "Malice shall not be imputed to a person based solely on his or her participation in a crime." The committee added a bench note to these three instructions to alert users that, as a result of this amendment, the natural and probable consequences doctrine might no longer apply to attempted murder.

Murder: Alternative Theories (CALCRIM No. 548)

Senate Bill 1437 added two theories of felony murder accomplice liability: aider and abettor with intent to kill and major participant with reckless indifference. The legislation also carved out an exception when the victim was a peace officer. The committee inserted new language in this instruction to account for murder prosecutions where the evidence supports more than one theory of felony murder liability.

Homicide: Provocative Act by Accomplice (CALCRIM No. 561)

The addition of subdivision (a)(3) to Penal Code section 188 also has potential consequences for provocative act liability when an accomplice commits the provocative act. The committee added a bench note about this possible impact.

Cautionary Admonitions and Duties of Judge and Jury (CALCRIM Nos. 101 and 200)

Addressing the potential for bias among jurors during deliberations is an important issue. Based on requests from several trial court judges, the committee added additional language about bias to highlight to jurors the importance of not allowing bias to affect their deliberations.

Engaging in Oral Copulation or Sexual Penetration (CALCRIM No. 1128)

In *People v. Saavedra* (2018) 24 Cal.App.5th 605 *(Saavedra)*, the trial court erred in instructing the jury with the general intent language of CALCRIM No. 252 in a prosecution for Penal Code section 288.7(b) because the underlying act was sexual penetration and not oral copulation. The court found the error to be harmless because CALCRIM No. 1128 "correctly defined sexual penetration and informed jurors of the requisite purpose." *Id.* at p. 615. The committee added a bench note to instruct on specific intent when the underlying act is sexual penetration. The committee also added *Saavedra* to the authority section.

Consciousness of Guilt: False Statements (CALCRIM No. 362)

In *People v. Burton* (2018) 29 Cal.App.5th 917, the court upheld CALCRIM No. 362 over a challenge that the instruction's reference to "the charged crime" improperly undermined the defendant's claim that her false statement to the police reflected consciousness of guilt of a lesser offense. In response to this case, the committee added a bench note that suggests modifying the instruction when the evidence supports an inference that the defendant was aware of his or her guilt generally but not of the charged crime.

***Instructions that involve deadly or dangerous weapon* (CALCRIM Nos. 511, 524, 860, 862, 863, 875, 982, 983, 2503, 2720, 2721, 3130, and 3145)**

In *People v. Stutelberg* (2018) 29 Cal.App.5th 314, the defendant was convicted of assault for waiving around a box cutter. The court reversed this conviction because CALCRIM Nos. 875 and 3145 did not provide the definition for inherently deadly or dangerous weapons. As a result, the court concluded that jurors could have erroneously classified the box cutter as inherently dangerous. In response to this holding, the committee added the definition of inherently deadly or dangerous weapon to these instructions and included bench notes about when trial courts should include the phrase "inherently deadly." The committee also added case citations to the authority section.

***Arson: Inhabited Structure or Property* (CALCRIM No. 1502)**

A user noted that the definition of an inhabited structure in the burglary instruction (CALCRIM No. 1701) contains different wording from the definition of that term in the arson instruction. The committee decided to conform the arson instruction with the burglary definition of "inhabited." The committee also added punctuation to make "inhabited structure" and "inhabited property" optional.

Policy implications

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

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from May 29 through July 5, 2019. The committee received responses from nine commenters. The text of all comments received and the committee's responses are included in a comments chart attached at pages 6–25.

Alternatives considered

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

Fiscal and Operational Impacts

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

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

freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 6–25
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 26–305.

CALCRIM-2019-01 Invitation to Comment
Revised CALCRIM Instructions
The longer comments have been lightly edited

Instruction	Commentator	Comment	Response
101 & 200	Hon. Kelvin Filer, Los Angeles Superior Court	I definitely agree with the proposed additions to the Cautionary Instructions - CalCrim 101 and 200!! It is important to remind our jurors that, as human beings, we ALL have implied biases and that part of their job is going to be to set aside those biases to be fair to all the parties in the case. I have been using this language as additions to my regular instructions and I think it helps the jurors to relax a little in carrying out their duties - it "humanizes" the process!	No response necessary.
101 & 200	Hon. Christopher Hite, San Francisco Superior Court	I had one suggested edit to the instructions: You must not let bias, prejudice, or public opinion influence your assessment of the evidence or your decision in this case. Many people have conscious and/or unconscious biases about other people. You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, [or] socioeconomic status(./,) [or _____<insert any other impermissible form of bias>.] I am sure there was a lot of time and effort put into this change, but it seems to read a bit challenging to me. I'm not sure this fixes it all that much but if not, I think the original needs to be more clear.	The committee agrees with the suggestion to add "your" before "decision." The committee disagrees with the suggestions to add "in this case" and "conscious and/or unconscious biases about other people." To make the instruction clearer, the committee changed the second sentence to read: "Many people have assumptions and biases about or stereotypes of other people and may be unaware of them."
101 & 200	Hon. Bobbi Tillmon, Los Angeles Superior Court	Please accept my comments only for CALCRIM #101 and #200. The proposed language is similar to part of the California Civil Instruction #113 which is a very important instruction to remind jurors of their responsibility to avoid biased thinking in their decision making.	No response necessary.
101 & 200	Judge Lee Tsao, Chair Judge Brenda Penny, Vice-Chair Los Angeles Superior Court Access and Fairness Committee	The Los Angeles Superior Court's Access and Fairness Committee lodges its support for the proposed changes to CALCRIM 101 and 200 which caution jurors in a criminal case against the effects of implicit bias upon their decision making. Our committee has been actively engaged in educating judicial officers in our court about implicit bias. During the last several years, we presented four judicial trainings on the subject, two of which were presented jointly with the Access to Justice Committee of the Los Angeles County Bar Association. While implicit bias has been the subject of scholarly research for many years, in the past decade have we seen an increased awareness of the harmful effects of implicit bias in the legal system. Articles published by the American Judges	No response necessary.

Instruction	Commentator	Comment	Response
		Association, Judge Mark Bennett of the Northern District of Iowa, and Professor Jerry Kang of the UCLA School of Law, to name a few, reveal how implicit bias can be manifested by just about anyone in a courtroom, including jurors, witnesses, attorneys, judges and court staff. Each time a bias is left uncorrected, we undermine our ability to achieve justice for all. The research teaches us that in order to combat the effects of implicit bias upon our decision making, we must first become aware of them. This appears to be the primary purpose behind CACI 113, introduced in 2010 for jurors in civil cases. Because of the lack of any corresponding implicit bias instruction for criminal cases, some judges hearing criminal cases have been adding CACI 113 to their standard CALCIM instructions. One such person is Judge Kelvin Filer, a member of our committee who has been instructing on CACI 113 for years in his criminal cases. On behalf of our committee, Judge Filer submitted proposed changes to CALCRIM 101 to the Advisory Committee on Criminal Jury Instructions. Judge Filer's efforts were the impetus for the proposed changes to CALCRIM 101 and 200 now under consideration. When discussing these changes to CALCRIM as a committee and during our trainings on implicit bias to judges of our court, it became apparent that many judges presiding over criminal cases were unaware of the existence of an implicit bias instruction in CACI. Our committee believes that the real question is not whether courts should instruct upon implicit bias, but rather how we should do so. In this regard, we believe that judges need just as much guidance as jurors and that a standardized approach, which balances the need for education about implicit bias with demands for efficiency, is the best approach. That a standard jury instruction addressing implicit bias has been in place in civil cases for nearly a decade points to an even greater need in criminal cases where life and liberty are at stake. The proposed changes to CALCRIM 101 and 200 effectively and efficiently address that need and they are long overdue.	
402 & 403	Erin Loback, Deputy District Attorney from Alameda County	Because of the changes to Penal Code section 188, consider adding a sentence such as this: "If the non-target offense is murder, you must also determine whether the defendant had the required mental state of malice aforethought as	The committee disagrees with the assertion that a defendant who harbors malice can be guilty under natural and probable

Instruction	Commentator	Comment	Response
		defined elsewhere in these instructions." (This suggestion is based on my review of many cases through the lens of 1170.95.) I disagree with the comment that a verdict of murder can no longer be based on the doctrine of natural and probable consequences. It can (and per ***Chiu*** it is second degree), with an individualized showing of malice aforethought.	consequences of murder as a nontarget offense. Although a codefendant's target offense might not be murder, a defendant's target offense would be murder if the defendant acts with malice.
402 & 403	Kate Chatfield, on behalf of The Justice Collaborative	Comment – add to Bench Notes: **Do not give this instruction if the non-target crime committed by the coparticipant is murder. Penal Code section 188(a)(3), as amended by Statutes 2018, ch.1015 (S.B. 1437), became effective January 1, 2019. The amendment added "Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime." Section 1 of S.B. 1437 stated, "(g) Except as stated in subdivision (e) of Section 189 of the Penal Code, a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective mens rea."** **There is no more liability for murder for a non-killer based on the natural and probable consequences doctrine. (See also Senate Concurrent Resolution 48, (Resolution Chapter 175, 2017–18 Regular Session)** **The question whether this amendment abolished the natural and probable consequences doctrine as to attempted murder is unresolved.**	The committee disagrees with this suggestion. The committee has already added language about Pen. Code, § 188(a)(3) in the Related Issues section. The commenter's proposed statement to include in the instructional duty section is unnecessary.
417	Robert Mestman, Sr. Deputy District Attorney, on behalf of the Orange County District Attorney's Office	[The] paragraph under the heading "Conspiracy Liability – Natural and Probable Consequences" [in CALCRIM No. 540B] should be added to instruction No. 417.	The committee does not currently have a proposed modification for this instruction and will consider this comment at its next meeting.

CALCRIM-2019-01 Invitation to Comment
Revised CALCRIM Instructions
The longer comments have been lightly edited

Instruction	Commentator	Comment	Response
417	Kate Chatfield, on behalf of The Justice Collaborative	Add to the bench notes under Instructional Duty: **Do not give this instruction if the non-target crime committed by the coconspirator is murder and the defendant did not act with express or implied malice.** **Penal Code section 188(a)(3), as amended by Statutes 2018, ch.1015 (S.B. 1437), became effective January 1, 2019. The amendment added "Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime." Section 1 of S.B. 1437 stated, "(g) Except as stated in subdivision (e) of Section 189 of the Penal Code, a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective *mens rea*." (See also Senate Concurrent Resolution 48, (Resolution Chapter 175, 2017–18 Regular Session).** **There is no more liability for murder for a non-killer based on the natural and probable consequences doctrine. The question whether this amendment abolished the natural and probable consequences doctrine as to attempted murder is unresolved.**	The committee does not currently have a proposed modification for this instruction and will consider this comment at its next meeting.
540A	Kate Chatfield, on behalf of The Justice Collaborative	The note [on imperfect self-defense] states that "malice aforethought which imperfect self-defense negates, is not an element of felony murder." (See *People v. Tabios* (1998) 67 Cal. App. 4th 1, 6-9) However, after SB 1437, malice now is an element of felony murder for non-perpetrators of the killing. For the non-killer accomplice, that person either has to have the mental state of an intention to kill or act with the mental state of reckless indifference to human life in the killing. (See *People v. Clark* (2016) 63 Cal. 4th 522, 617.). One can conceive of a situation in which a defendant could raise a defense of imperfect self-defense or defense of others. Accordingly, although this Note on Imperfect Self Defense appears in 540A (and appropriately not in 540B) to avoid confusion, it should state:	The committee disagrees with this suggestion. Intent to kill is not the same as express malice and reckless indifference is not the same as implied malice. Although malice can be mitigated by heat of passion or imperfect self-defense, intent to kill and conscious disregard are not themselves mitigated by heat of passion or imperfect self-defense. Section 189(e) continues to allow for imputed malice under certain

Instruction	Commentator	Comment	Response
		Malice aforethought is not an element of felony murder when the prosecution has proved beyond a reasonable doubt that the defendant was the actual killer.	circumstances and that imputed malice is not negated by heat of passion or imperfect self-defense.
540A	The Offices of the Los Angeles County Public Defender and Alternate Public Defender	**Escape Rule in CALCRIM 540A.** The Introduction to the Proposed Changes states: [T]he committee has deleted [CALCRIM no. 549] and replaced it with appropriate bench note references. If the defendant committed the homicidal act and fled, that killing did not occur in the commission of the felony if the fleeing felon has reached a place of temporary safety. (*People v. Wilkins, supra*, at p. 345.) However, the language in CALCRIM 540A itself does not comport with this language and is legally insufficient. Proposed CALCRIM 540A contains a bracketed portion that states: *<If the facts raise an issue whether the commission of the felony continued while a defendant was fleeing the scene, give the following sentence instead of CALCRIM No. 3261, While Committing a Felony: Defined--Escape Rule.>* [The crime of -----<insert felony or felonies from Pen. Code, § 189> continues until a defendant has reached a place of temporary safety.] The instruction should contain the following statement: If the defendant committed the homicidal act and fled, that killing did not occur in the commission of the felony if the fleeing felon has reached a place of temporary safety. This language is consistent with the Supreme Court's holding in *Wilkins*: When the killing occurs during flight, however, the escape rule establishes the outer limits of the continuous-transaction theory. Flight following a felony is considered part of the same transaction as long as the felon has not reached a place of temporary safety. (*People v. Wilkins* (2013) 56 Cal.4th 333, 345, internal citations omitted.)	This comment raises issues outside the scope of the current invitation to comment. The committee will consider this comment at its next meeting.
540B & 540C	Robert Mestman, Sr. Deputy District Attorney, on behalf of the Orange County	**AGREE WITH THE PROPOSAL IF IT IS MODIFIED** Felony murder of a police officer should be its own instruction. For instance, CALCRIM 540B should be split into 2 instructions: 1) dealing with felony murder with the major participant language (PC § 189(e)(3)); and 2) felony	The committee previously considered whether to create a separate peace officer exception instruction. Ultimately the

Instruction	Commentator	Comment	Response
	District Attorney's Office	murder dealing with death of law enforcement officer (PC § 189(f)). The logic behind this recommendation is that PC 189(f) states that the circumstance that are required in 189(e) [the factors that are subsequently "organized" in 540A, 540B, 540C] do not apply to felony murder of police officers. Further, 189(f) has additional factors that a jury must consider (e.g. officer in lawful performance of his duties, defendant knew or should have known victim was officer, etc.) that do not apply to felony murder under 189(e)(3). Thus, it is much cleaner to have separate instructions. Additionally, it is foreseeable where a prosecutor may proceed under both theories – a) felony murder where officer was in lawful performance of his duties and b) felony murder where defendant was a major participant. Thus, the court would have to instruct twice using 540B, but just using the different theories. [NOTE: we understand that 540B and C deal with co-participant caused murder and other acts caused murder and therefore, for uniformity, the committee may want two instructions for felony murder of a police officer to mirror 540B and C, but ultimately that makes little sense given that felony murder of a police officer is now its own subset of the felony murder rule.]	committee decided to include the peace officer exception in these two instructions because it is preferable to have all accomplice liability theories in one instruction and unnecessary to create a separate instruction. However, in response to this comment, the committee added an "[OR]" before alternative 189(f) and additional punctuation so that a trial court would only need to instruct once using 540B (or 540C) regardless of how many theories of liability the evidence supported.
540B & 540C	Robert Mestman, Sr. Deputy District Attorney, on behalf of the Orange County District Attorney's Office	These instructions contain the following sentence: "[It is not required that the defendant be present when the act causing the death occurs.]" While this is a correct statement of law, we are concerned that it potentially runs afoul of the *Banks* factors which are considered when deciding whether the defendant was a major participant (e.g., "4. Was the defendant in a position to facilitate or to prevent the death?") As was noted in *Banks*, the defendant's absence from the scene was a major factor contributing to the conclusion that he was not a major participant. So the inclusion of this bracketed language could undercut *Banks*. My concern, therefore, is that we may find the court overturning a conviction where this bracketed language was included in a jury instruction. Perhaps a cautionary note would be helpful.	The committee does not agree that a cautionary note is warranted. The statement about presence is not inconsistent with the identified *Banks* factor: the statement tells the jury not to acquit merely because the defendant is not present; whereas, the *Banks* factor tells the jury to consider the defendant's position to facilitate or to prevent the death among many factors when deciding whether to convict or to acquit.
540B & 540C	Erin Loback, Deputy District Attorney from Alameda County	Text is great. Consider also citing ***People v. Clark*****,** 63 Cal.4th 522 (2016), along with ***Tison*** and ***Estrada*** with respect to "reckless indifference to human life."	The committee agrees with this suggestion and has added *People v. Clark* to the Authority section.

CALCRIM-2019-01 Invitation to Comment
Revised CALCRIM Instructions
The longer comments have been lightly edited

Instruction	Commentator	Comment	Response
540B & 540C	Barry P. Helft, Chief Deputy State Public Defender, on behalf of the Office of the State Public Defender ("OSPD")	***Clarification of the Reckless Indifference Standard*** These two proposed instructions reflect revisions undertaken in response to the amendments to the murder statutes made effective on January 1, 2019 by the passage of Senate Bill No. 1437 (2017-2018 Reg. Sess.). Specifically, both address the potential felony-murder liability of defendants who aided and abetted the underlying felony but did so without intending the resulting murder. As the instructions accurately state, such defendants can be found liable for the murder only if, as "major participant[s]" in the underlying felony they acted "with reckless indifference to human life." (Pen. Code, § 189, subd. (e) (3).) The instructions provide the following guidance regarding the mental component of that standard: A person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death. OSPD's concern stems from the fact that the "major participant /reckless indifference" standard has long been applied in the context of the felony-murder special circumstance set forth in Penal Code section 190.2 and – although juries have been instructed accordingly – they have clearly misunderstood what the standard requires, for there have been (and continue to be) an exceptional number of appellate reversals of such findings based on the constitutional insufficiency of the evidence to support them. (E.g., *People v. Clark* (2016) 63 Cal.4th 522; *People v. Banks* (2015) 61 Cal.4th 788; *In re Taylor* (2019) 34 Cal.App.5th 543; *In re Ramirez* (2019) 32 Cal.App.5th 384; *In re Bennett* (2018) 26 Cal.App.5th 1002; *In re Miller* (2017) 14 Cal.App.5th 960.) In its opinions in these cases, the appellate courts have pointed to a ready source of confusion for jurors – namely, the notion that by merely participating in a felony that has the clear potential of resulting in violence (typically, an armed robbery) the aider and abettor has necessarily evinced "a reckless indifference to human life." The Supreme Court has emphasized – in terms that speak directly to the proposed instruction – that "participation in an armed robbery, without more, does *not* involve 'engaging in criminal activities known to carry a grave	When revising CALCRIM Nos. 540B and 540C pursuant to SB 1437, the committee incorporated the existing reckless indifference standard from CALCRIM No. 703 (*Special Circumstances – Felony Murder*) but did not evaluate whether this standard should be expanded or clarified. This suggestion is therefore outside the scope of the current invitation to comment. The committee will consider it at its next meeting.

Instruction	Commentator	Comment	Response
		risk of death.'" (*People v. Banks*, *supra*, 61 Cal.4th at p. 805 [emphasis supplied; citation omitted]; accord, *People v. Clark*, *supra*, 63 Cal.4th at pp. 617-618.) Rather, to suffer liability, "[t]he defendant must be aware of and willingly involved in the violent manner in which the particular offense is committed, demonstrating reckless indifference to the significant risk of death his or her actions create." (*Banks*, *supra*, 61 Cal.4th at p. 801.) Thus the defendant's conduct must demonstrate "a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions." (*Clark*, *supra*, 63 Cal.4th at p. 617.) OSPD suggests that, to avoid the confusion and improper, unjust results that have repeatedly arisen in the special circumstance context, the instructions incorporate the clarifying language found in the Supreme Court's opinions. Thus OSPD proposes that the portions of CALCRIM Nos. 540B and 540C discussing "reckless indifference to human life" be modified to read substantially as follows: A person acts with reckless indifference to human life when that person knowingly engages in criminal activity that he or she knows involves a grave risk of death. However, the defendant's participation in [insert underlying felony] does not, in itself, constitute engaging in a criminal activity known to carry a grave risk of death. Rather, to find that the defendant acted with reckless disregard of human life you must determine that the defendant was aware of and willingly involved in the violent manner in which the crime was committed, demonstrating reckless indifference to the significant risk of death his or her actions created. Put another way, to find the defendant guilty under this theory you must find that his or her conduct demonstrated a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant did not specifically desire that death as the outcome of his or her actions.	
540B & 540C	Barry P. Helft, Chief Deputy State Public Defender, on behalf of	***Incorporation of "Related Issues" Commentary from CALCRIM NO. 540A*** In the "Related Issues" section of both CALCRIM No. 540B and CALCRIM No. 540C, the Council has kept the paragraph incorporating the Related Issues	The committee disagrees with this suggestion. Intent to kill is not the same as express malice and

Instruction	Commentator	Comment	Response
	the Office of the State Public Defender ("OSPD")	section of CALCRIM No. 540A ("Felony Murder: First Degree – Defendant Allegedly Committed Fatal Act.") However, the amendment of Penal Code sections 188 and 189 by Senate Bill No. 1437 makes wholesale incorporation improper. Specifically, the Related Issues section of CALCRIM No. 540A provides, in pertinent part, that "Imperfect self-defense is not a defense to felony murder because malice aforethought, which imperfect self-defense negates, is not an element of felony murder." While that remains true for perpetrators after Senate Bill No. 1437, and thus is properly included in CALCRIM No. 540A, it is now an incorrect statement of the law for accomplices who did not commit the fatal act. The language thus should not be incorporated by reference into CALCRIM Nos. 540B and 540C. Malice is now required for accomplices who did not commit the fatal act. (See Pen. Code, §§ 188, 189, as amended by Sen. Bill No. 1437.) To be guilty of first degree murder, the jury must find that a non-killer accomplice either directly aided and abetted the murder or was a major participant in a felony listed in Penal Code section 189 and acted with reckless indifference to human life. Reckless indifference to human life is a state of malice aforethought. It "requires subjective awareness of a higher degree of risk than the 'conscious disregard for human life' required for conviction of second degree murder based on implied malice." (*People v. Johnson* (2016) 243 Cal.App.4th 1247, 1285.) Because malice is now required, imperfect self-defense and other malice-negating theories are now applicable. OSPD suggests revising the Related Issues sections of CALCRIM Nos. 540B and 540C, so that they read as follows: See the Related Issues section of CALCRIM No. 540A, Felony Murder: First Degree – Defendant Allegedly Committed Fatal Act. However, malice-negating theories, including imperfect self-defense, remain available to defendants who did not commit the fatal act and the jury must be instructed that the prosecutor	reckless indifference is not the same as implied malice. Although malice can be mitigated by heat of passion or imperfect self-defense, intent to kill and conscious disregard are not themselves mitigated by heat of passion or imperfect self-defense. Section 189(e) continues to allow for imputed malice under certain circumstances and that imputed malice is not negated by heat of passion or imperfect self-defense.

Instruction	Commentator	Comment	Response
		bears the burden to disprove all malice-negating theories beyond a reasonable doubt.	
540B, 540C & 703	Kate Chatfield, on behalf of The Justice Collaborative	In *People v. Estrada*, (1995) 11 Cal. 4th 568, 578, the Supreme Court stated that the court does not have a sua sponte duty to define "reckless indifference to human life" because this phrase has a "common understanding." However, as *People v. Banks*, *People v. Clark* (2016) 63 Cal. 4th 522 and its progeny[1] have made clear, this phrase is *not* commonly understood by juries. It has been improperly argued and applied, leading to overbroad application against defendants who did not act with reckless indifference to human life under the case law. Moreover, in its current proposed form, the limited definition that is offered as a suggestion does not adequately focus the jury on the fact that the defendant must act with reckless indifference to human life *in the actual murder*; participating in a dangerous felony *alone* is insufficient to show the requisite recklessness. The proposed definition, even should the court give it, will allow the jury to improperly conflate the mere participation in the dangerous felony with a finding of reckless indifference to human life. This will result in defendants being improperly convicted of first-degree murder, as they have of special circumstances under Penal Code § 190.2 (d). To highlight this point, instructions very similar to the proposed suggested instructions were given in *In re Ramirez*, 32 Cal. App. 5th at 395, fn. 5. Although the California Supreme Court determined in *Estrada* that trial courts have no sua sponte duty to explain the phrase "reckless indifference to human life" to the jury (*Estrada, supra*, 11 Cal.4th at p. 581, 46 Cal.Rptr.2d 586, 904 P.2d 1197), the written form of CALJIC No. 8.80.1 (1996 rev.) (5th ed. 1988) instructed petitioner's jury that '[a] defendant acts with reckless indifference to human life when that defendant knows or is	The committee disagrees with the comment that SB 1437 created a sua sponte duty to instruct on reckless indifference. *Estrada* held there was no duty to instruct on the meaning of reckless indifference for the felony-murder special circumstance. The passage of SB 1437, by making reckless indifference and major participant elements of accomplice liability for felony murder, does not change this holding. Regarding the comment that the reckless indifference standard is inadequate: the committee incorporated this standard from CALCRIM No. 703 (*Special Circumstances – Felony Murder*) but did not evaluate whether it should be expanded or clarified. This suggestion is therefore outside the scope of the current invitation to comment and the committee will consider it at its next meeting.

[1] See *In re Bennett* (2018) 26 Cal.App.5th 1002; *People v. Taylor* (2019) 34 Cal.App.5th 543; *In re Ramirez* (2019) 32 Cal.App.5th 384; *In re Miller* (2017) 14 Cal.App.5th 960

Instruction	Commentator	Comment	Response
		aware that his acts involve a grave risk of death to an innocent human being.' Thus, despite the fact that the jury was given this limited instruction on reckless indifference to human life the *Ramirez* court held: "no reasonable juror could have found defendant aided and abetted the attempted robbery 'with reckless indifference to human life and as a major participant' (§ 190.2, subd. (d)), as those terms are set out in *Tison* and explicated by *Banks* and *Clark*." (*Ramirez, supra,* at 406.) As courts have noted, in order to determine whether someone acted with reckless indifference to human life, a court or jury must assess a person's "**individual responsibility for the loss of life**, not just his or her vicarious responsibility for the underlying crime." (*In re Bennett* (2018) 26 Cal.App.5th 1002, emphasis added.) A trier of fact must focus on whether the defendant's *own* actions in the killing exhibited the state of mind of reckless indifference. (See *People v. Banks* (2015) 61 Cal. 4th 788, 807 [as nothing at trial supported a conclusion that defendant's own actions were recklessly indifferent, or involved a grave risk of death, special circumstance finding reversed].) A defendant's own actions must evince a willingness to kill or to assist another in killing (*People v. Clark* (2016) 63 Cal. 4th 522, 617.); mere participation in a dangerous felony is insufficient. (See *Banks*, *Clark*, *Tison*, *Enmunds*) Accordingly, as a result of SB 1437, the court must not only give an instruction on reckless indifference and major participation in the felony for accomplices under Penal Code § 189(e)(3) when the facts require it, as these are now elements of the offense for certain accomplices to a felony murder, but the court must also properly define what it means to act with reckless indifference to human life. **COMMENTER'S PROPOSED INSTRUCTIONS REGARDING RECKLESS INDIFFERENCE TO HUMAN LIFE**	

Instruction	Commentator	Comment	Response
		<The following instructions must[2] be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies> **[A person *acts with reckless indifference to human life* when he or she personally engages in criminal activity that he or she knows involves a grave risk of death.** **Recklessness to human life is a standard of behavior in which one's own actions shows a willingness to kill or to assist another in killing.** **The fact that defendant or another accomplice was armed during the felony and therefore there was a foreseeable risk of death is insufficient on its own to find that defendant acted with reckless indifference to human life.** **In determining whether defendant acted with reckless indifference to human life, you must assess the defendant's own actions and individual responsibility for the loss of life not just [his/her] responsibility for the underlying crime. In order to decide whether the defendant acted with reckless indifference to human life, you may consider the following factors:** **1) The defendant's knowledge of weapons, and the use and number of weapons** **2) The defendant's proximity to the killing** **3) The defendant's opportunity to stop the killing or aid the victim.** **4) The duration of the restraint of the victims before the murder.** **5) The defendant's knowledge (either before or during the commission of the felony) that another participant was likely to kill. Awareness that another participant was armed is insufficient on its own to show that the defendant knew that participant was likely to kill.** **6) The defendant's efforts to minimize the possibility of violence during the felony.** **7) [*any other relevant factor*]** **No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life.]**	

[2] As noted above, as a result of SB 1437, it must now be proven beyond a reasonable doubt that a person was the actual killer; intended to kill; or acted as a major participant in the felony and with reckless indifference to human life. Accordingly, when there is an issue as to whether a defendant acted with reckless indifference to human life, these instructions must be given.

Instruction	Commentator	Comment	Response
		COMMENTER'S SUGGESTED BENCH NOTES Instructional Duty **As "reckless indifference to human life" and acting as a "major participant" in the felony are necessary elements to be found liable for first degree murder under a theory of felony murder, the court has a sua sponte duty to define these elements for the jury.** ~~The court does not have a sua sponte duty to define "reckless indifference to human life." (People v. Estrada (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (Id. at p. 579.) The court may give the bracketed definition of reckless indifference if requested.~~ ~~In People v. Banks (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the Banks factors need be given.~~ *Alternatively, even if it is decided that there is no sua sponte duty to define the terms, the word "must" can be replaced with "may" with the expanded definition added.* AUTHORITY *** Reckless Indifference To Human Life (*People v. Banks* (2015) 61 Cal. 4th 788, 799-804, 807-812; *People v. Clark* (2016) 63 Cal. 4th 522, 614-624; *In re Bennett* (2018) 26 Cal. App.5th 1002, 1021-1027; *People v. Taylor* (2019) 34 Cal. App. 5th 543; *In re Ramirez* (2019) 32 Cal. App. 5th 384; *In re Miller* (2017) 14 Cal.App.5th 960, 967-977)**	
540B, 540C, & 703	The Offices of the Los Angeles County Public Defender and Alternate Public Defender	**CALCRIMS 540B, 540C, and 703 Inadequately Define Reckless Indifference.** CALCRIMs 540B, 540C, and 703 instruct in a bracketed portion: [A person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows involves a grave risk	When revising CALCRIM Nos. 540B and 540C pursuant to SB 1437, the committee incorporated the existing reckless indifference standard from CALCRIM No.

Instruction	Commentator	Comment	Response
		of death.] This statement is misleading and will give jurors the misimpression that engaging in a dangerous felony is sufficient to find the defendant acted with reckless indifference: [A]lthough the felonies listed in section 189 are those that the Legislature views as "inherently dangerous," this did not collapse the differences between an analysis involving felony murder, on the one hand, and an analysis of reckless indifference to human life, on the other. [*People v. Banks*, supra, 61 Cal.4th at p. 810.] As we concluded, "[w]hether a category of crimes is sufficiently dangerous to warrant felony-murder treatment, and whether an individual participant has acted with reckless indifference to human life, are different inquiries." (*Ibid.*) (*People v. Clark* (2016) 63 Cal.4th 522, 616.) The jury must be informed that reckless indifference requires that the defendant "knowingly created a serious risk of death," which is a higher standard than that proposed in these instructions. [T]he governing standard as explained in *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522, is not satisfied with evidence of a general indifference to human life, but instead with evidence of a reckless indifference, which is shown when the defendant knowingly creates a serious risk of death. *(Banks, supra*, 61 Cal.4th at pp. 808- 809.) (*In re Taylor* (2019) 34 Cal.App.5th 543, 560, emphasis added.) The proposed instructions' failure to properly define "reckless indifference" is compounded by the failure to include the case-specific factors expressly delineated in *People v. Clark* (2016) 63 Cal.4th 522; the Supreme Court considered these factors in upholding a determination of reckless indifference to human life: (1) Knowledge of Weapons, and Use and Number of Weapons (2) Physical Presence at the Crime and Opportunities to Restrain the Crime and/or Aid the Victim	703 (*Special Circumstances – Felony Murder*) but did not evaluate whether this standard should be expanded or clarified. This suggestion is therefore outside the scope of the current invitation to comment. The committee will consider it at its next meeting.

Instruction	Commentator	Comment	Response
		(3) Duration of the Felony (4) Defendant's Knowledge of Cohort's Likelihood of Killing (5) Defendant's Efforts to Minimize the Risks of the Violence During the Felony The definition of "reckless indifference to human life" should be modified to instruct that the "person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows creates a serious risk of death," as well as include the five case-specific factors listed in *Clark*.	
540C	The Offices of the Los Angeles County Public Defender and Alternate Public Defender	**CALCRIM 540C Should Eliminate Reference to Natural and Probable Consequences.** The proposed instruction states: An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence. This instruction creates confusion by using the term "natural and probable consequence" to describe causation in relation to murder. SB 1437's amendments to Penal Code section 188 eliminated the natural and probable consequences doctrine as it relates to murder. Use of the term "natural and probable consequences" in this instruction will invite unnecessary confusion. Under California law there is no strict requirement of "causation" between a "killing" and the commission of a felony under the felony-murder rule, however Penal Code section 189 does require a "killing" in the perpetration of one of the designated felonies. A simultaneous or coincidental "death" is not a "killing." It has been held in California that death from a heart attack during the course of a robbery is murder if " ... but for the robbery the victim would not have experienced the fright which brought on the fatal heart attack." (*People v. Stamp* (1969) 2 Ca1.App.3d 203, 209.) Conversely, if death would have occurred despite the robbery, the death is not a "killing" which would constitute "murder." (*People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378.) CALCRIM 540C should be redrafted to state:	This comment raises issues outside the scope of the current invitation to comment. The committee will consider this comment at its next meeting.

Instruction	Commentator	Comment	Response
		An act causes death if the death would not have happened without the act. If the death would have occurred despite commission of the act, the death is not a killing that constitutes murder.	
548	Erin Loback, Deputy District Attorney from Alameda County	"Whether" is a better choice than "that" in the last paragraph.	The committee agrees with this suggestion and has changed the word back to "whether."
548	Barry P. Helft, Chief Deputy State Public Defender, on behalf of the Office of the State Public Defender ("OSPD")	***Potentially Ambiguous Language Regarding Unanimity Requirement*** The final sentence of the proposed instruction ("you must unanimously agree that the murder is in the first or second degree") is open to an erroneous interpretation. The jurors could understand it to mean that they could "unanimously agree that the murder is in the first or second degree" if some of them believe the murder is in the first degree, and some of them believe the murder is in the second degree. Even with that split in their opinions, they would be "unanimously agree[ing]" that the murder is either "in the first or second degree." This interpretation would be legally improper. The jury must unanimously determine whether murder is in the first or second degree. (*People v. Jones* (2014) 230 Cal.App.4th 373, 376.) And when two alternative theories of murder support different degrees of murder, juror unanimity is required as to the theory of guilt. (*People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1018, 1026; see also *People v. Johnson* (2016) 243 Cal.App.4th 1247, 1279-1280.) To address this problem, OSPD suggests that the final sentence of the proposed instruction be replaced with the following language: You do not all need to agree on the same theory, but in order to convict the defendant of murder you must be unanimous in finding the defendant guilty of first degree murder, or unanimous in finding the defendant guilty of second degree murder. If different theories of murder support different degrees of murder, you must be unanimous as to the theory of guilt.	The committee disagrees with the assertion that this instruction could be erroneously interpreted by jurors. Jurors are told not to return a verdict on second degree murder without first acquitting on first degree murder. Therefore, in the event of a split among jurors about degree, the jurors would understand not to return a verdict for either degree. Further, there is no requirement of unanimity as to the theory of guilt. However, the committee agrees that the instruction could possibly be improved with different or additional language. Therefore, the committee will reconsider this comment at its next meeting.

CALCRIM-2019-01 Invitation to Comment
Revised CALCRIM Instructions
The longer comments have been lightly edited

Instruction	Commentator	Comment	Response
548	Barry P. Helft, Chief Deputy State Public Defender, on behalf of the Office of the State Public Defender ("OSPD")	***Revision of Bench Note to Reflect New Mens Rea Requirement*** As noted, the proposed instruction informs jurors that, when the defendant is prosecuted for murder on two or more theories "You do not all need to agree on the same theory . . . ." There is some cautionary language in the proposed Bench Notes to CALCRIM No. 548 based on *People v. Dellinger* (1984) 163 Cal.App.3d 284, 300-302, stating: "If there is evidence of multiple acts from which the jury might conclude that the defendant killed the decedent, the court may be required to give CALCRIM No. 3500, Unanimity." Senate Bill No. 1437 (2017-2018 Reg. Sess.) compelled statutory changes to the mens rea element of felony murder in cases where the defendant was not the actual perpetrator of the killing. Accordingly, OSPD suggests adding the following language to the Bench Note: > When the theories of murder include felony murder where the defendant allegedly committed the fatal act, and felony murder where the defendant did not commit the fatal act, a unanimity instruction must be given. The additional language is necessary because the theories of felony murder as an actual perpetrator, and felony murder as an aider and abettor, rely on different acts or factual scenarios and, following the passage of Senate Bill No. 1437, there are separate defenses to each. Malice is now an element of the latter but not the former. A unanimity instruction is warranted in such a case for the same reasons one was required in *People v. Dellinger*, *supra*, 163 Cal.App.3d 284.	The committee disagrees with this proposal. *Dellinger* says that unanimity might be required for a multiple-acts case; it does not say that unanimity is required when there are multiple theories of felony-murder liability that differ based on who committed the single fatal act. The presence of different defenses might mean that a theory has not been proven beyond a reasonable doubt. It does not mean that there has to be unanimity as to the theory.
561	Kate Chatfield, on behalf of The Justice Collaborative	As the proposed Bench Notes state, as a result of changes to Penal Code section 188, there can no longer be murder liability when a participant in a crime does not act with malice aforethought. ("Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime." Penal Code section 188(a)(3)) As provocative act murder by an accomplice does not require malice aforethought on the part of the non-provocateur defendant, this theory of murder liability has been legislatively repealed.	The committee previously considered whether to revoke this instruction but decided instead to add the proposed cautionary bench note. To revoke this instruction in the absence of case law would be premature.

Instruction	Commentator	Comment	Response
		Further, in addition to the changes Penal Code § 188 noted by Judicial Council, Section 1, subd.(g) of Senate Bill 1437 states: > Except as stated in subdivision (e) of Section 189 of the Penal Code, a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective *mens rea*. As provocative act murder by an accomplice is not premised on the defendant's own actions, nor is the defendant's subjective state of mind at issue, there can be no more murder liability under this doctrine for a non-killer. This instruction should be revoked.	
703	Erin Loback, Deputy District Attorney from Alameda County	These are good changes.	No response necessary.
1045-1051	Robert Mestman, Sr. Deputy District Attorney, on behalf of the Orange County District Attorney's Office	The same issue addressed by this revision [in No. 1128] regarding specific intent required for sexual penetration of a minor 10 years or younger [288.7(b)] also applies to other sexual penetrations in violation of PC § 289. (See *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1539-40). A similar note with citation to *McCoy* and *Saavedra* should be included in instruction Nos. 1045 through 1051. While No. 1045 does contain a brief mention to "intent" under AUTHORITY, more clarification in a note or commentary would be appropriate. Here is proposed language: > If the defendant is charged with sexual penetration in violation of Penal Code § 289, instruct that the defendant must have specific intent. (*People v. McCoy* (2013) 215 Cal.App.4th 1510, 1539-1540; *People v. Saavedra* (2018) 24 Cal.App.5th 605, 613- 615.)	The committee does not currently have proposed modifications for these instructions and will consider this comment at its next meeting.
1128 & 252	Robert Mestman, Sr. Deputy District Attorney, on behalf of the Orange County	**AGREE WITH THE PROPOSAL IF IT IS MODIFIED** While it is a good idea to clarify that specific intent is required for a violation of PC § 288.7(b) [sexual penetration of a minor 10 or younger], we are not sure the appropriate place to include this note is in No. 252, as opposed to the instruction for the underlying crime. Such a note is included in No. 1128. Including this note	The committee agrees with this comment and has removed the proposed addition for CALCRIM No. 252.

Instruction	Commentator	Comment	Response
	District Attorney's Office	in No. 252 may set a bad precedent. Should all mental states/intents for every crime now be listed in instructions Nos. 250-252? We believe that the appropriate place to include a note about mental state/intent for a particular crime is in the instruction for the underlying crime.	
511, 524, 860, 862-863, 875, 982-983, 2503, 2720, 2721, 3130, 3145	The Offices of the Los Angeles County Public Defender and Alternate Public Defender	The modification to these instructions (dealing with deadly or dangerous weapons) is misleading and incomplete and should be reconsidered. The instructions have been modified to add this language: [An object is inherently deadly if it is deadly or dangerous in the ordinary use for which it is designed.] This is only a partial statement of the law and, therefore, is incorrect as stated. The drafters claim to have taken this modification from *People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318. The problem is that the drafters omitted the trailing portion of the definition. The Court of Appeal in *Stutelberg* said, "An 'inherently deadly or dangerous' weapon is a term of art describing objects that are deadly or dangerous in "the ordinary use for which they are designed," that is, weapons that have no practical nondeadly purpose." (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 318-319.) The correct definition, pursuant to *Stutelberg* is: An object is inherently deadly if it is deadly or dangerous in the ordinary use for which it is designed, that is, the object has no practical nondeadly purpose. The proposed instruction is incorrect as a matter of law because it leaves out the final clause, which specifies what makes the item deadly. The Supreme Court, in *In re B.M.* (2018) 6 Cal.5th 528, explains that whether an item is a deadly or dangerous weapon is nuanced. First, the object alleged to be a deadly weapon must be used in a manner that is not only capable of producing but also "likely to produce death or great bodily injury." (*B.M.* at p. 533, emphasis in original.) The use of an object in a manner likely to produce death or great bodily injury requires more than a mere possibility that serious injury could have resulted from	The committee disagrees with the suggestion to add the clause "that is, weapons that have no practical nondeadly purpose" to the definition of inherently deadly. This clause states an alternate and equivalent phrasing of the definition; it is not a limitation of the definition. And reliance on *In re B.M.* is misplaced because that case dealt with a noninherently deadly weapon.

Instruction	Commentator	Comment	Response
		the way the object was used. (*B.M.* at p. 534.) Second, the law does not permit conjecture as to how the object could have been used. Rather, the determination of whether an object is a deadly weapon must rest on evidence of how the defendant actually used the object. (*B.M.* at p. 534.) Third, although it is appropriate to consider the injury that could have resulted from the way the object was used, the extent of actual injury or lack of injury is also relevant. A conviction for assault with a deadly weapon does not require proof of an injury or even physical contact, but limited injury or lack of injury may suggest that the nature of the object or the way it was used was not capable of producing or likely to produce death or serious harm. (*B.M.* at p. 535.) These CALCRIMs, if they are to be modified, must be modified to correctly state the definition found in *In re B.M.*	
511, 524, 860, 862-863, 875, 982-983, 2503, 2720, 2721, 3130, 3145	The Offices of the Los Angeles County Public Defender and Alternate Public Defender	There is a modification to the Bench Note which is confusing. As modified, the Bench Note states: If there is substantial evidence whether the object is a deadly weapon as a matter of law, give both bracketed portions. This modification is poorly worded and its meaning uncertain. The intent of the drafters is unclear; it is possible, however, that the drafters meant that when it cannot be said that the object is a deadly weapon as a matter of law, then both bracketed portions should be given. If that was the intent, then the sentence should be rewritten thusly: If there is no substantial evidence that the object is a deadly weapon as a matter of law, give both bracketed portions.	The committee agrees that the proposed bench note could be improved. In response, the committee has changed the sentence to: "If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions."

CALCRIM Proposed Changes
Table of Contents

*technical change only

Instruction Number	Instruction Title
703	Special Circumstances: Felony Murder
732	Special Circumstances: Murder in Commission of Felony – Arson
810 & 890*	Torture; Assault with Intent
860, 862, 863, 875	Assault Offenses that define deadly or dangerous weapon
970	Shooting Firearm in Grossly Negligent Manner
982 & 983	Brandishing Firearm or Deadly Weapon
1015-1022, 1070, 1080-1082, 1090, 1091, 1101, 1123*	Sex Offenses
1128	Engaging in Oral Copulation or Sexual Penetration With Child 10 Years of Age or Younger
1191A	Evidence of Uncharged Sex Offenses
1203*	Kidnapping: For Robbery, Rape, other Sex Offenses
1502	Arson: Inhabited Structure or Property
2100, 2101, 2102	DUI Causing Injury
2306*	Possession of Controlled Substance with Intent to Commit Sexual Assault
2503	Possession of Deadly Weapon With Intent to Assault
2572	Possession of Explosive or Destructive Device
2651 & 2652	Trying to Prevent an Executive Officer From Performing Duty; Resisting an Executive Officer
2720 & 2721	Assault by Prisoner
2900 & 2902	Vandalism; Damaging phone or electrical line
3130 & 3145	Personally Armed With Deadly Weapon; Personally Used Deadly Weapon
3406*	Mistake of Fact

*technical change only

101 Cautionary Admonitions: Jury Conduct (Before, During, or After Jury Is Selected)

Our system of justice requires that trials be conducted in open court with the parties presenting evidence and the judge deciding the law that applies to the case. It is unfair to the parties if you receive additional information from any other source because that information may be unreliable or irrelevant and the parties will not have had the opportunity to examine and respond to it. Your verdict must be based only on the evidence presented during trial in this court and the law as I provide it to you.

During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. Do not share information about the case in writing, by email, by telephone, on the Internet, or by any other means of communication. You must not talk about these things with other jurors either, until you begin deliberating.

As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not allow anything that happens outside of the courtroom to affect your decision [unless I tell you otherwise]. During the trial, do not read, listen to, or watch any news report or commentary about the case from any source.

Do not use the Internet (, a dictionary/[, or _____<*insert other relevant source of information or means of communication*>]) in any way in connection with this case, either on your own or as a group. Do not investigate the facts or the law or do any research regarding this case. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

[If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom and during jury deliberations. An electronic device includes any data storage device. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you without delay.]

During the trial, do not speak to a defendant, witness, lawyer, or anyone associated with them. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you about the case, you must end the conversation.

If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff.

Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

~~**Do not let bias, sympathy, prejudice, or public opinion influence your decision.**~~ **You must not let bias, prejudice, or public opinion influence your assessment of the evidence or your decision. Many people have assumptions and biases about or stereotypes of other people and may be unaware of them. You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, [or] socioeconomic status(./,) [or** *<insert any other impermissible form of bias>.*]

You must reach your verdict without any consideration of punishment.

I want to emphasize that you may not use any form of research or communication, including electronic or wireless research or communication, to research, share, communicate, or allow someone else to communicate with you regarding any subject of the trial. [If you violate this rule, you may be subject to jail time, a fine, or other punishment.]

When the trial has ended and you have been released as jurors, you may discuss the case with anyone. [But under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.]

New January 2006; Revised June 2007, April 2008, December 2008, April 2010, October 2010, April 2011, February 2012, August 2012, August 2014, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jurors on how they must conduct themselves during trial. (Pen. Code, § 1122.) See also California Rules of Court Rule 2.1035.

When giving this instruction during the penalty phase of a capital case, the court has a **sua sponte** duty to delete the sentence which reads "Do not let bias, sympathy, prejudice, or public opinion influence your decision." (*People v. Lanphear* (1984) 36 Cal.3d 163, 165 [203 Cal.Rptr. 122, 680 P.2d 1081]; *California v. Brown* (1987) 479 U.S. 538, 545 [107 S.Ct. 837, 93 L.Ed.2d 934].) The court should also delete the following sentence: "You must reach your verdict without any consideration of punishment."

If there will be a jury view, give the bracketed phrase "unless I tell you otherwise" in the fourth paragraph. (Pen. Code, § 1119.)

AUTHORITY

- Statutory Admonitions. ▸ Pen. Code, § 1122.
- Avoid Discussing the Case. ▸ *People v. Pierce* (1979) 24 Cal.3d 199 [155 Cal.Rptr. 657, 595 P.2d 91]; *In re Hitchings* (1993) 6 Cal.4th 97 [24 Cal.Rptr.2d 74, 860 P.2d 466]; *In re Carpenter* (1995) 9 Cal.4th 634, 646–658 [38 Cal.Rptr.2d 665, 889 P.2d 985].
- Avoid News Reports. ▸ *People v. Holloway* (1990) 50 Cal.3d 1098, 1108–1111 [269 Cal.Rptr. 530, 790 P.2d 1327], disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830 [38 Cal.Rptr.2d. 394, 889 P.2d 588].
- Judge's Conduct as Indication of Verdict. ▸ *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- No Bias, Sympathy, or Prejudice. ▸ *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- No Independent Research. ▸ *People v. Karis* (1988) 46 Cal.3d 612, 642 [250 Cal.Rptr. 659, 758 P.2d 1189]; *People v. Castro* (1986) 184 Cal.App.3d 849, 853 [229 Cal.Rptr. 280]; *People v. Sutter* (1982) 134 Cal.App.3d 806, 820 [184 Cal.Rptr. 829].
- Prior Version of This Instruction Upheld. ▸ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1182–1183 [67 Cal.Rptr.3d 871].

- Court's Contempt Power for Violations of Admonitions. ▸ Pen. Code, § 1122(a)(1); Code Civ. Proc. § 1209(a)(6) (effective 1/1/12).

RELATED ISSUES

Admonition Not to Discuss Case With Anyone

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court's admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

> It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror during deliberations . . . . may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses, spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(*Id.* at p. 306, fn. 11.)

The court may, at its discretion, add the suggested language to the second paragraph of this instruction.

Jury Misconduct

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (3d ed. 2000), Criminal Trial § 643.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 81, *Jury Selection and Opening Statement*, § 81.06[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[1], [4] (Matthew Bender).

123 Witness Identified as John or Jane Doe

In this case, a person is called ((John/Jane) Doe/ _____<*insert other name used*>**). This name is used only to protect (his/her) privacy, as required by law. [The fact that the person is identified in this way is not evidence. Do not consider this fact for any purpose.]**

New January 2006

BENCH NOTES

Instructional Duty

If an alleged victim will be identified as John or Jane Doe, the court has a **sua sponte** duty to give this instruction at the beginning and at the end of the trial. (Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].)

Penal Code section 293.5 provides that the alleged victim of certain offenses may be identified as John or Jane Doe if the court finds it is "reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense." (*Id.,* § 293.5(a).) This applies only to alleged victims of offenses under the following Penal Code sections: 261 (rape), 261.5 (unlawful sexual intercourse), 262 (rape of spouse), 264.1 (aiding and abetting rape), 286 (sodomy), 288 (lewd or lascivious act), 287~~8a~~ (oral copulation), and 289 (penetration by force). Note that the full name must still be provided in discovery. (*Id.,* § 293.5(a); *People v. Bohannon* (2000) 82 Cal.App.4th 798, 803, fn. 7 [98 Cal.Rptr.2d 488]; *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, 1338 [64 Cal.Rptr.2d 714].)

Give the last two bracketed sentences on request. (*People v. Ramirez, supra,* 55 Cal.App.4th at p. 58.)

AUTHORITY

- Identification as John or Jane Doe. ▸ Pen. Code, § 293.5(a).
- Instructional Requirements. ▸ Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].
- Statute Constitutional. ▸ *People v. Ramirez* (1997) 55 Cal.App.4th 47, 54–59 [64 Cal.Rptr.2d 9].

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 553.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 70, *Discovery and Investigation*, § 70.05 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.24[3] (Matthew Bender).

200 Duties of Judge and Jury

Members of the jury, I will now instruct you on the law that applies to this case. [I will give you a copy of the instructions to use in the jury room.] [Each of you has a copy of these instructions to use in the jury room.] [The instructions that you receive may be printed, typed, or written by hand. Certain sections may have been crossed-out or added. Disregard any deleted sections and do not try to guess what they might have been. Only consider the final version of the instructions in your deliberations.]

You must decide what the facts are. It is up to all of you, and you alone, to decide what happened, based only on the evidence that has been presented to you in this trial.

~~Do not let bias, sympathy, prejudice, or public opinion influence your decision.~~ You must not let bias, prejudice, or public opinion influence your assessment of the evidence or your decision. Many people have assumptions and biases about or stereotypes of other people and may be unaware of them. You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, [or] socioeconomic status (./,) [or *<insert any other impermissible form of bias>.* **~~Bias includes, but is not limited to, bias for or against the witnesses, attorneys, defendant[s] or alleged victim[s], based on disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, [or] socioeconomic status (./,) [or _____ <insert any other impermissible basis for bias as appropriate>.]~~**

You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions.

Pay careful attention to all of these instructions and consider them together. If I repeat any instruction or idea, do not conclude that it is more important than any other instruction or idea just because I repeated it.

Some words or phrases used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically

defined in these instructions are to be applied using their ordinary, everyday meanings.

Some of these instructions may not apply, depending on your findings about the facts of the case. [Do not assume just because I give a particular instruction that I am suggesting anything about the facts.] After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.

New January 2006; Revised June 2007, April 2008, December 2008, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct that the jurors are the exclusive judges of the facts and that they are entitled to a copy of the written instructions when they deliberate. (Pen. Code, §§ 1093(f), 1137.) Although there is no sua sponte duty to instruct on the other topics described in this instruction, there is authority approving instruction on these topics.

In the first paragraph, select the appropriate bracketed alternative on written instructions. Penal Code section 1093(f) requires the court to give the jury a written copy of the instructions on request. The committee believes that the better practice is to always provide the jury with written instructions. If the court, in the absence of a jury request, elects not to provide jurors with written instructions, the court must modify the first paragraph to inform the jurors that they may request a written copy of the instructions.

Do not instruct a jury in the penalty phase of a capital case that they cannot consider sympathy. (*People v. Easley* (1982) 34 Cal.3d 858, 875–880 [196 Cal.Rptr. 309, 671 P.2d 813].) Instead of this instruction, CALCRIM 761 is the proper introductory instruction for the penalty phase of a capital case.

Do not give the bracketed sentence in the final paragraph if the court will be commenting on the evidence pursuant to Penal Code section 1127.

AUTHORITY

- Copies of Instructions. ▸ Pen. Code, §§ 1093(f), 1137.

- Judge Determines Law. ‣ Pen. Code, §§ 1124, 1126; *People v. Como* (2002) 95 Cal.App.4th 1088, 1091 [115 Cal.Rptr.2d 922]; see *People v. Williams* (2001) 25 Cal.4th 441, 455 [106 Cal.Rptr.2d 295, 21 P.3d 1209].
- Jury to Decide the Facts. ‣ Pen. Code, § 1127.
- Attorney's Comments Are Not Evidence. ‣ *People v. Stuart* (1959) 168 Cal.App.2d 57, 60–61 [335 P.2d 189].
- Consider All Instructions Together. ‣ *People v. Osband* (1996) 13 Cal.4th 622, 679 [55 Cal.Rptr.2d 26, 919 P.2d 640]; *People v. Rivers* (1993) 20 Cal.App.4th 1040, 1046 [25 Cal.Rptr.2d 602]; *People v. Shaw* (1965) 237 Cal.App.2d 606, 623 [47 Cal.Rptr. 96].
- Follow Applicable Instructions ‣ *People v. Palmer* (1946) 76 Cal.App.2d 679, 686–687 [173 P.2d 680].
- No Bias, Sympathy, or Prejudice ‣ Pen. Code, § 1127h; *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- This Instruction Upheld ‣ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1185 [67 Cal.Rptr.3d 871].

RELATED ISSUES

Jury Misconduct

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, §§ 643, 644.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 80, *Defendant's Trial Rights*, § 80.05[1], Ch. 83, *Evidence*, § 83.02, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[1], [2][c], 85.03[1], 85.05[2], [4] (Matthew Bender).

208 Witness Identified as John or Jane Doe

In this case, a person is called ((John/Jane) Doe/ _____<*insert other name used*>**). This name is used only to protect (his/her) privacy, as required by law. [The fact that the person is identified in this way is not evidence. Do not consider this fact for any purpose.]**

New August 2009

BENCH NOTES

Instructional Duty

If an alleged victim will be identified as John or Jane Doe, the court has a **sua sponte** duty to give this instruction at the beginning and at the end of the trial. (Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].)

Penal Code section 293.5 provides that the alleged victim of certain offenses may be identified as John or Jane Doe if the court finds it is "reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense." (*Id.,* § 293.5(a).) This applies only to alleged victims of offenses under the following Penal Code sections: 261 (rape), 261.5 (unlawful sexual intercourse), 262 (rape of spouse), 264.1 (aiding and abetting rape), 286 (sodomy), 288 (lewd or lascivious act), 287~~8a~~ (oral copulation), and 289 (penetration by force). Note that the full name must still be provided in discovery. (*Id.,* § 293.5(a); *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, 1338 [64 Cal.Rptr.2d 714].)

Give the last two bracketed sentences on request. (*People v. Ramirez, supra,* 55 Cal.App.4th at p. 58.)

AUTHORITY

- Identification as John or Jane Doe. ▸ Pen. Code, § 293.5(a).
- Instructional Requirements. ▸ Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].
- Statute Constitutional. ▸ *People v. Ramirez* (1997) 55 Cal.App.4th 47, 54–59 [64 Cal.Rptr.2d 9].

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 553.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 70, *Discovery and Investigation*, § 70.05 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.24[3] (Matthew Bender).

362. Consciousness of Guilt: False Statements

If [the] defendant [_____ <*insert name of defendant when multiple defendants on trial*>] made a false or misleading statement before this trial relating to the charged crime, knowing the statement was false or intending to mislead, that conduct may show (he/she) was aware of (his/her) guilt of the crime and you may consider it in determining (his/her) guilt. [You may not consider the statement in deciding any other defendant's guilt.]

If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself.

New January 2006, Revised August 2009, April 2010, September 2019

BENCH NOTES

Instructional Duty

This instruction should not be given unless it can be inferred that the defendant made the false statement for self-protection rather than to protect someone else. (*People v. Rankin* (1992) 9 Cal.App.4th 430, 436 [11 Cal.Rptr.2d 735] [error to instruct on false statements and consciousness of guilt where defendant lied to protect an accomplice]; see also *People v. Blakeslee* (1969) 2 Cal.App.3d 831, 839 [82 Cal.Rptr. 839].)

Consider modifying this instruction when the evidence supports an inference that the defendant was aware of his or her guilt generally, but not of the charged crime. *People v. Burton* (2018) 29 Cal.App.5th 917, 926, fn.2 [241 Cal.Rptr.3d 35].

AUTHORITY

- Instructional Requirements ▸ *People v. Najera* (2008) 43 Cal.4th 1132, 1139 [77 Cal.Rptr.3d 605, 184 P.3d 732] [in context of adoptive admissions]; *People v. Atwood* (1963) 223 Cal.App.2d 316, 333 [35 Cal.Rptr. 831]; but see *People v. Carter* (2003) 30 Cal.4th 1166, 1197-1198 [135 Cal.Rptr.2d 553, 70 P.3d 981]; see also *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 102–103 [17 Cal.Rptr.3d 710, 96 P.3d 30].
- This Instruction Upheld ▸ *People v. McGowan* (2008) 160 Cal.App.4th 1099, 1104 [74 Cal.Rptr.3d 57].

COMMENTARY

The word "willfully" was not included in the description of the making of the false statement. Although one court suggested that the jury be explicitly instructed that the defendant must "willfully" make the false statement (*People v. Louis* (1984) 159 Cal.App.3d 156, 161–162 [205 Cal.Rptr. 306]), the California Supreme Court subsequently held that such language is not required. (*People v. Mickey* (1991) 54 Cal.3d 612, 672, fn. 9 [286 Cal.Rptr. 801, 818 P.2d 84].)

RELATED ISSUES

Evidence

The false nature of the defendant's statement may be shown by inconsistencies in the defendant's own testimony, his or her pretrial statements, or by any other prosecution evidence. (*People v. Kimble* (1988) 44 Cal.3d 480, 498 [244 Cal.Rptr. 148, 749 P.2d 803] [overruling line of cases that required falsity to be demonstrated only by defendant's own testimony or statements]; accord *People v. Edwards* (1992) 8 Cal.App.4th 1092, 1103 [10 Cal.Rptr.2d 821]; *People v. Williams* (1995) 33 Cal.App.4th 467, 478–479 [39 Cal.Rptr.2d 358].)

Un-Mirandized Voluntary Statement

The *Miranda* rule (*Miranda v. Arizona* (1966) 384 U.S. 436, 444, 479 [86 S.Ct. 1602, 16 L.Ed.2d 694]) does not prohibit instructing the jury that it may draw an inference of guilt from a willfully false or deliberately misleading un-*Mirandized* statement that the defendant voluntarily introduces into evidence on direct examination. (*People v. Williams* (2000) 79 Cal.App.4th 1157, 1166–1169 [94 Cal.Rptr.2d 727].)

SECONDARY SOURCES

1 Witkin, California Evidence (4th Ed. 2000) Hearsay, § 110.

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 641.
4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.13[1], Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][c] (Matthew Bender).

363–369. Reserved for Future Use

376. Possession of Recently Stolen Property as Evidence of a Crime

---

If you conclude that the defendant knew (he/she) possessed property and you conclude that the property had in fact been recently (stolen/extorted), you may not convict the defendant of _____ <*insert crime*> based on those facts alone. However, if you also find that supporting evidence tends to prove (his/her) guilt, then you may conclude that the evidence is sufficient to prove (he/she) committed _____ <*insert crime*>.

The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstances tending to prove (his/her) guilt of _____ <*insert crime*>.

[You may also consider whether _____ <*insert other appropriate factors for consideration*>.]

Remember that you may not convict the defendant of any crime unless you are convinced that each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt.

New January 2006, September 2019

BENCH NOTES

Instructional Duty

In *People v. Najera* (2008) 43 Cal.4th 1132, 1141 [77 Cal.Rptr.3d 605, 184 P.3d 732], the Supreme Court abrogated *People v. Clark* (1953) 122 Cal.App.2d 342, 346 [265 P.2d 43] [failure to instruct that unexplained possession alone does not support finding of guilt was error]. Accordingly, there is no longer a sua sponte duty to give this instruction.

The instruction may be given when the charged crime is robbery, burglary, theft, or receiving stolen property. (See *People v. McFarland* (1962) 58 Cal.2d 748, 755 [26 Cal.Rptr. 473, 376 P.2d 449] [burglary and theft]; *People v. Johnson* (1993) 6 Cal.4th 1, 36–37 [23 Cal.Rptr.2d 593, 859 P.2d 673] [burglary]; *People v. Gamble* (1994) 22 Cal.App.4th 446, 453 [27 Cal.Rptr.2d 451] [robbery]; *People v. Anderson* (1989) 210 Cal.App.3d 414, 424 [258 Cal.Rptr. 482] [receiving stolen property].) The crime of receiving stolen property includes receiving property that was obtained by extortion (Pen. Code, § 496). Thus, the instruction also includes optional language for recently extorted property.

Use of this instruction should be limited to theft and theft-related crimes. (*People v. Prieto* (2003) 30 Cal.4th 226, 248-249 [66 P.3d 1123; 133 Cal.Rptr.2d 18] [trial court's failure to do so was error.]; *People v. Barker* (2001) 91 Cal.App.4th 1166, 1176 [111 Cal.Rptr.2d 403] [disapproving use of instruction to infer guilt of murder]; but see *People v. Harden* (2003) 110 Cal.App.4th 848, 856 [2 Cal.Rptr.3d 105] [court did not err in giving modified instruction on possession of recently stolen property in relation to special circumstance of murder committed during robbery]; *People v. Smithey* (1999) 20 Cal.4th 936, 975–978 [86 Cal.Rptr.2d 243, 978 P.2d 1171] [in a case involving both premeditated and felony murder, no error in instructing on underlying crimes of robbery and burglary]; *People v. Mendoza* (2000) 24 Cal.4th 130, 176–177 [99 Cal.Rptr.2d 485, 6 P.3d 150].)

Corroborating Evidence

The bracketed paragraph that begins with "You may also consider" may be used if the court grants a request for instruction on specific examples of corroboration supported by the evidence. (See *People v. Russell* (1932) 120 Cal.App. 622, 625–626 [8 P.2d 209] [list of examples]; see also *People v. Peters* (1982) 128 Cal.App.3d 75, 85–86 [180 Cal.Rptr. 76] [reference to false or contradictory statement improper when no such evidence was introduced]). Examples include the following:

a. False, contradictory, or inconsistent statements. (*People v. Anderson* (1989) 210 Cal.App.3d 414, 424 [258 Cal.Rptr. 482]; see, e.g., *People v. Peete* (1921) 54 Cal.App. 333, 345–346 [202 P. 51] [false statement showing consciousness of guilt]; *People v. Lang* (1989) 49 Cal.3d 991, 1024–1025 [264 Cal.Rptr. 386, 782 P.2d 627] [false explanation for possession of property]; *People v. Farrell* (1924) 67 Cal.App. 128, 133–134 [227 P. 210] [same].)

b. The attributes of possession, e.g., the time, place, and manner of possession that tend to show guilt. (*People v. Anderson, supra,* 210 Cal.App.3d at p. 424; *People v. Hallman* (1973) 35 Cal.App.3d 638, 641 [110 Cal.Rptr. 891]; see, e.g., *People v. Gamble* (1994) 22 Cal.App.4th 446, 453–454 [27 Cal.Rptr.2d 451].)

c. The opportunity to commit the crime. (*People v. Anderson, supra,* 210 Cal.App.3d at p. 425; *People v. Mosqueira* (1970) 12 Cal.App.3d 1173, 1176 [91 Cal.Rptr. 370].)

d. The defendant's conduct or statements tending to show guilt, or the failure to explain possession of the property under circumstances that

indicate a "consciousness of guilt." (*People v. Citrino* (1956) 46 Cal.2d 284, 288–289 [294 P.2d 32]; *People v. Wells* (1960) 187 Cal.App.2d 324, 328–329, 331–332 [9 Cal.Rptr. 384]; *People v. Mendoza* (2000) 24 Cal.4th 130, 175–176 [99 Cal.Rptr.2d 485, 6 P.3d 150]; *People v. Champion* (1968) 265 Cal.App.2d 29, 32 [71 Cal.Rptr. 113].)

e. Flight after arrest. (*People v. Scott* (1924) 66 Cal.App. 200, 203 [225 P. 767]; *People v. Wells, supra,* 187 Cal.App.2d at p.329.)

f. Assuming a false name and being unable to find the person from whom the defendant claimed to have received the property. (*People v. Cox* (1916) 29 Cal.App. 419, 422 [155 P. 1010].)

g. Sale of property under a false name and at an inadequate price. (*People v. Majors* (1920) 47 Cal.App. 374, 375 [190 P. 636].)

h. Sale of property with identity marks removed (*People v. Miller* (1920) 45 Cal.App. 494, 496–497 [188 P. 52]) or removal of serial numbers (*People v. Esquivel* (1994) 28 Cal.App.4th 1386, 1401 [34 Cal.Rptr.2d 324]).

i. Modification of the property. (*People v. Esquivel, supra,* 28 Cal.App.4th at p. 1401 [shortening barrels of shotguns].)

j. Attempting to throw away the property. (*People v. Crotty* (1925) 70 Cal.App. 515, 518–519 [233 P. 395].)

AUTHORITY

- Instructional Requirements ▸ *People v. Williams* (2000) 79 Cal.App.4th 1157, 1172 [94 Cal.Rptr.2d 727]; see *People v. McFarland* (1962) 58 Cal.2d 748, 755 [26 Cal.Rptr. 473, 376 P.2d 449].
- This Instruction Upheld ▸ *People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1577 [64 Cal.Rptr.3d 116]; *People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1036 [63 Cal.Rptr.3d 659].
- Corroboration Defined ▸ See Pen. Code, § 1111; *People v. McFarland* (1962) 58 Cal.2d 748, 754–755 [26 Cal.Rptr. 473, 376 P.2d 449].
- Due Process Requirements for Permissive Inferences ▸ *Ulster County Court v. Allen* (1979) 442 U.S. 140, 157, 165 [99 S.Ct. 2213, 60 L.Ed.2d 777]; *People v. Williams* (2000) 79 Cal.App.4th 1157, 1172; *People v. Gamble* (1994) 22 Cal.App.4th 446, 454–455 [27 Cal.Rptr.2d 451].

- Examples of Corroborative Evidence ▸ *People v. Russell* (1932) 120 Cal.App. 622, 625–626 [8 P.2d 209].
- Recently Stolen ▸ *People v. Anderson* (1989) 210 Cal.App.3d 414, 421–422 [258 Cal.Rptr. 482]; *People v. Lopez* (1954) 126 Cal.App.2d 274, 278 [271 P.2d 874].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 13 [in context of larceny]; § 82 [in context of receiving stolen property]; § 86 [in context of robbery]; § 135 [in context of burglary].

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 526 [presumptions].

1 Witkin, California Evidence (4th ed. 2000) Burden of Proof and Presumptions, § 62.

1 Witkin, California Evidence (4th ed. 2000) Circumstantial Evidence, § 129.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][c] (Matthew Bender).

402. Natural and Probable Consequences Doctrine (Target and Non-Target Offenses Charged)

The defendant is charged in Count[s] __ with _____ <*insert target offense*> **and in Counts[s] ___ with _____** <*insert non-target offense*>**.**

You must first decide whether the defendant is guilty of _____ <*insert target offense*>**. If you find the defendant is guilty of this crime, you must then decide whether (he/she) is guilty of _____ <***insert non-target offense*>**.**

Under certain circumstances, a person who is guilty of one crime may also be guilty of other crimes that were committed at the same time.

To prove that the defendant is guilty of _____ <*insert non-target offense*>**, the People must prove that:**

1. **The defendant is guilty of _____ <***insert target offense*>**;**

2. **During the commission of _____** <*insert target offense*> **a coparticipant in that _____** <*insert target offense*> **committed the crime of _____ <***insert non-target offense*>**;**

AND

3. **Under all of the circumstances, a reasonable person in the defendant's position would have known that the commission of _____** <*insert non-target offense*> **was a natural and probable consequence of the commission of the _____** <*insert target offense*>**.**

A *coparticipant* in a crime is the perpetrator or anyone who aided and abetted the perpetrator. It does not include a victim or innocent bystander.

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

[Do not consider evidence of defendant's intoxication in deciding whether _____ <*insert non-target offense*> **was a natural and probable consequence of _____** <*insert target offense*>**.]**

To decide whether the crime of _____ <*insert non-target offense*> was committed, please refer to the separate instructions that I (will give/have given) you on that crime.

[The People allege that the defendant originally intended to aid and abet the commission of either _____ <*insert target offense*> or _____ <*insert other target offense*>. The defendant is guilty of _____ <*insert non-target offense*> if the People have proved that the defendant aided and abetted either _____ <*insert target offense*> or _____ <*insert other target offense*> and that _____ <*insert non-target offense*> was the natural and probable consequence of either _____ <*insert target offense*> or _____ <*insert other target offense*>. However, you do not need to agree on which of these two crimes the defendant aided and abetted.]

New January 2006; Revised June 2007, April 2010, February 2013, August 2014, February 2015, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on that theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561[199 Cal.Rptr. 60, 674 P.2d 1318].)

The court has a **sua sponte** duty to identify and instruct on any target offense relied on by the prosecution as a predicate offense when substantial evidence supports the theory. Give all relevant instructions on the alleged target offense or offenses. The court, however, does not have to instruct on all potential target offenses supported by the evidence if the prosecution does not rely on those offenses. (*People v. Prettyman* (1996) 14 Cal.4th 248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013]; see *People v. Huynh* (2002) 99 Cal.App.4th 662, 677–678 [121 Cal.Rptr.2d 340] [no sua sponte duty to instruct on simple assault when prosecutor never asked court to consider it as target offense].)

The target offense is the crime that the accused parties intended to commit. The non-target is an additional unintended crime that occurs during the commission of the target.

Give the bracketed paragraph beginning, "Do not consider evidence of defendant's intoxication" when instructing on aiding and abetting liability for a non-target offense. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1134 [77 Cal.Rptr.2d 428, 959 P.2d 735].)

Related Instructions

Give CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*, before this instruction.

This instruction should be used when the prosecution relies on the natural and probable consequences doctrine and charges both target and non-target crimes. If only non-target crimes are charged, give CALCRIM No. 403, *Natural and Probable Consequences Doctrine (Only Non-Target Offense Charged)*.

AUTHORITY

- Aiding and Abetting Defined. ▸ *People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Natural and Probable Consequences, Reasonable Person Standard. ▸ *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].
- ~~A Verdict of First Degree Murder May Not Be Based on the Natural and Probable Consequences Doctrine; Murder Under That Doctrine is Second Degree Murder.~~ ▸ ~~*People v. Chiu* (2014) 59 Cal.4th 155, 166 [172 Cal.Rptr.3d 438, 325 P.3d 972].~~
- Reasonably Foreseeable Crime Need Not Be Committed for Reason Within Common Plan ▸ *People v. Smith* (2014) 60 Cal.4th 603, 616–617 [180 Cal.Rptr.3d 100, 337 P.3d 1159].

COMMENTARY

In *People v. Prettyman* (1996) 14 Cal.4th 248, 268 [58 Cal.Rptr.2d 827, 926 P.2d 1013], the court concluded that the trial court must sua sponte identify and describe for the jury any target offenses allegedly aided and abetted by the defendant.

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, we have included a suggested definition. (See *People v. Prettyman, supra,* 14 Cal.4th at p. 291 (conc. & dis. opn. of Brown, J.); see also *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 107–109 [17 Cal.Rptr.3d 710, 96 P.3d 30] [court did not err in failing to define "natural and probable"].)

RELATED ISSUES

Murder

A verdict of murder may not be based on the natural and probable consequences doctrine. Pen. Code, § 188(a)(3). Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question whether this amendment abolished the natural and probable consequences doctrine as to

attempted murder is unresolved.

Lesser Included Offenses

The court has a duty to instruct on lesser included offenses that could be the natural and probable consequence of the intended offense when the evidence raises a question whether the greater offense is a natural and probable consequence of the original, intended criminal act. (*People v. Woods* (1992) 8 Cal.App.4th 1570, 1586-1588 [11 Cal.Rptr.2d 231] [aider and abettor may be found guilty of second degree murder under doctrine of natural and probable consequences although the principal was convicted of first degree murder].)

Specific Intent—Non-Target Crimes

Before an aider and abettor may be found guilty of a specific intent crime under the natural and probable consequences doctrine, the jury must first find that the perpetrator possessed the required specific intent. (*People v. Patterson* (1989) 209 Cal.App.3d 610, 614 [257 Cal.Rptr. 407] [trial court erroneously failed to instruct the jury that they must find that the perpetrator had the specific intent to kill necessary for attempted murder before they could find the defendant guilty as an aider and abettor under the "natural and probable" consequences doctrine], disagreeing with *People v. Hammond* (1986) 181 Cal.App.3d 463 [226 Cal.Rptr. 475] to the extent it held otherwise.) However, it is not necessary that the jury find that the aider and abettor had the specific intent; the jury must only determine that the specific intent crime was a natural and probable consequence of the original crime aided and abetted. (*People v. Woods* (1992) 8 Cal.App.4th 1570, 1586–1587 [11 Cal.Rptr. 2d 231].)

Target and Non-Target Offense May Consist of Same Act

Although generally, non-target offenses charged under the natural and probable consequences doctrine will be different and typically more serious criminal acts than the target offense alleged, they may consist of the same act with differing mental states. (*People v. Laster* (1997) 52 Cal.App.4th 1450, 1463–1466 [61 Cal.Rptr.2d 680] [defendants were properly convicted of attempted murder as natural and probable consequence of aiding and abetting discharge of firearm from vehicle. Although both crimes consist of same act, attempted murder requires more culpable mental state].)

Target Offense Not Committed

The Supreme Court has left open the question whether a person may be liable under the natural and probable consequences doctrine for a non-target offense, if the target offense was not committed. (*People v. Prettyman* (1996) 14 Cal.4th 248, 262, fn. 4 [58 Cal.Rptr.2d 827, 926 P.2d 1013], but see *People v. Ayala* (2010) 181 Cal.App.4th 1440, 1452 [105 Cal.Rptr.3d 575]; *People v. Laster* (1997) 52 Cal.App.4th 1450, 1464-1465 [61 Cal.Rptr.2d 680].)

See generally, the related issues under CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Introduction to Crimes, §§ 82, 84, 88.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[1A][a], 85.03[2][d] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.10[3] (Matthew Bender).

403. Natural and Probable Consequences (Only Non-Target Offense Charged)

[Before you may decide whether the defendant is guilty of _____ *<insert non-target offense>***, you must decide whether (he/she) is guilty of _____** *<insert target offense>***.]**

To prove that the defendant is guilty of _____ *<insert non-target offense>***, the People must prove that:**

1. **The defendant is guilty of _____** *<insert target offense>***;**

2. **During the commission of _____** *<insert target offense>* **a coparticipant in that _____** *<insert target offense>* **committed the crime of _____** *<insert target offense>*;

   AND

3. **Under all of the circumstances, a reasonable person in the defendant's position would have known that the commission of the _____** *<insert non-target offense>* **was a natural and probable consequence of the commission of the _____** *<insert target offense>***.**

A *coparticipant* in a crime is the perpetrator or anyone who aided and abetted the perpetrator. It does not include a victim or innocent bystander.

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.
[Do not consider evidence of defendant's intoxication in deciding whether _____ *<insert non-target offense>* **was a natural and probable consequence of _____** *<insert target offense>***.]**

To decide whether crime of _____ *<insert non-target offense>* **was committed, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].**

[The People are alleging that the defendant originally intended to aid and abet _____ *<insert target offenses>***.**

If you decide that the defendant aided and abetted one of these crimes and that _____ <*insert non-target offense*> was a natural and probable consequence of that crime, the defendant is guilty of _____ <*insert non-target offense*>. You do not need to agree about which of these crimes the defendant aided and abetted.]

New January 2006; Revised June 2007, April 2010, February 2015, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr. 60, 674 P.2d 1318].)

The court has a **sua sponte** duty to identify and instruct on any target offense relied on by the prosecution as a predicate offense when substantial evidence supports the theory. Give all relevant instructions on the alleged target offense or offenses. The court, however, does not have to instruct on all potential target offenses supported by the evidence if the prosecution does not rely on those offenses. (*People v. Prettyman* (1996) 14 Cal.4th 248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013]; see *People v. Huynh* (2002) 99 Cal.App.4th 662, 677–678 [121 Cal.Rptr.2d 340] [no sua sponte duty to instruct on simple assault when prosecutor never asked court to consider it as target offense].)

The target offense is the crime that the accused parties intended to commit. The non-target is an additional unintended crime that occurs during the commission of the target.

Do not give the first bracketed paragraph in cases in which the prosecution is also pursuing a conspiracy theory.

Give the bracketed paragraph beginning, "Do not consider evidence of defendant's intoxication" when instructing on aiding and abetting liability for a non-target offense. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1134 [77 Cal.Rptr.2d 428, 959 P.2d 735].)

Related Instructions

Give CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*, before this instruction.

This instruction should be used when the prosecution relies on the natural and probable consequences doctrine and charges only non-target crimes. If both target and non-target crimes are charged, give CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-Target Offenses Charged).*

AUTHORITY

- Aiding and Abetting Defined ▸ *People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Natural and Probable Consequences, Reasonable Person Standard ▸ *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].
- No Unanimity Required ▸ *People v. Prettyman* (1996) 14 Cal.4th 248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013].
- Presence or Knowledge Insufficient ▸ *People v. Boyd* (1990) 222 Cal.App.3d 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87, 926 P.2d 1013].
- Withdrawal ▸ *People v. Norton* (1958) 161 Cal.App.2d 399, 403 [327 P.2d 87]; *People v. Ross* (1979) 92 Cal.App.3d 391, 404–405 [154 Cal.Rptr. 783].
- ~~Verdict of First Degree Murder May Not Be Based on the Natural and Probable Consequences Doctrine; Murder Under That Doctrine is Second Degree Murder ▸ *People v. Chiu* (2014) 59 Cal.4th 155, 167–168 [172 Cal.Rptr.3d 438, 325 P.3d 972].~~
- Reasonably Foreseeable Crime Need Not Be Committed for Reason Within Common Plan ▸ *People v. Smith* (2014) 60 Cal.4th 603, 616–617 [180 Cal.Rptr.3d 100, 337 P.3d 1159].

COMMENTARY

In *People v. Prettyman* (1996) 14 Cal.4th 248, 268 [58 Cal.Rptr.2d 827, 926 P.2d 1013], the court concluded that the trial court must sua sponte identify and describe for the jury any target offenses allegedly aided and abetted by the defendant.

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, we have included a suggested definition. (See *People v. Prettyman, supra,* 14 Cal.4th at p. 291 (conc. & dis. opn. of Brown, J.); see also *People v. Coffman and Marlow*

(2004) 34 Cal.4th 1, 107–109 [17 Cal.Rptr.3d 710, 96 P.3d 30] [court did not err in failing to define "natural and probable."])

RELATED ISSUES

Murder

A verdict of murder may not be based on the natural and probable consequences doctrine. Pen. Code, § 188(a)(3). Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. This amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question whether this legislation abolished the natural and probable consequences doctrine as to attempted murder is unresolved.

See the Related Issues section under CALCRIM No. 401, *Aiding and Abetting*, and CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-Target Offenses Charged)*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Introduction to Crimes, §§ 82, 84, 88.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, Challenges to Crimes, § 140.10[3] (Matthew Bender).

511 Excusable Homicide: Accident in the Heat of Passion

The defendant is not guilty of (murder/ [or] manslaughter) if (he/she) killed someone by accident while acting in the heat of passion. Such a killing is excused, and therefore not unlawful, if, at the time of the killing:

1. **The defendant acted in the heat of passion;**

2. **The defendant was (suddenly provoked by _____**<*insert name of decedent*>**/ [or] suddenly drawn into combat by _____**<*insert name of decedent*>**);**

3. **The defendant did not take undue advantage of _____**<*insert name of decedent*>**;**

4. **The defendant did not use a dangerous weapon;**

5. **The defendant did not kill _____**<*insert name of decedent*> **in a cruel or unusual way;**

6. **The defendant did not intend to kill _____**<*insert name of decedent*> **and did not act with conscious disregard of the danger to human life;**

AND

7. **The defendant did not act with criminal negligence.**

A person acts *in the heat of passion* when he or she is provoked into doing a rash act under the influence of intense emotion that obscures his or her reasoning or judgment. The provocation must be sufficient to have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection.

In order for the killing to be excused on this basis, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote

provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

It is not enough that the defendant simply was provoked. The defendant is not allowed to set up (his/her) own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than judgment.

[A *dangerous weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

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

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

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

AND

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

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

The People have the burden of proving beyond a reasonable doubt that the killing was not excused. If the People have not met this burden, you must find the defendant not guilty of (murder/ [or] manslaughter).

New January 2006; Revised April 2011, September 2019

BENCH NOTES

Instructional Duty

The trial court has a **sua sponte** duty to instruct on accident and heat of passion that excuses homicide when there is evidence supporting the defense. (*People v. Hampton* (1929) 96 Cal.App. 157, 159–160 [273 P. 854] [court erred in refusing defendant's requested instruction].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Related Instructions

CALCRIM No. 510, *Excusable Homicide: Accident*.

CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.

CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion –Lesser Included Offense*.

AUTHORITY

- Excusable Homicide if Committed in Heat of Passion. ▸ Pen. Code, § 195, subd. 2.
- Burden of Proof. ▸ Pen. Code, § 189.5; *People v. Frye* (1992) 7 Cal.App.4th 1148, 1154–1155 [10 Cal.Rptr.2d 217].
- Deadly Weapon Defined. ▸ See *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

Distinguished From Voluntary Manslaughter

Under Penal Code section 195, subd. 2, a homicide is "excusable," "in the heat of passion" if done "by accident," or on "sudden . . . provocation . . . or . . . combat." (Pen. Code, § 195, subd. 2.) Thus, unlike voluntary manslaughter, the killing must have been committed without criminal intent, that is, accidentally. (See *People v. Cooley* (1962) 211 Cal.App.2d 173, 204 [27 Cal.Rptr. 543], disapproved on other

grounds in *People v. Lew* (1968) 68 Cal.2d 774, 778, fn. 1 [69 Cal.Rptr. 102, 441 P.2d 942]; Pen. Code, § 195, subd. 1 [act must be without criminal intent]; Pen. Code, § 26, subd. 5 [accident requires absence of "evil design [or] intent"].) The killing must also be on "sudden" provocation, eliminating the possibility of provocation over time, which may be considered in cases of voluntary manslaughter. (See Bench Notes to CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion–Lesser Included Offense*.)

Distinguished From Involuntary Manslaughter

Involuntary manslaughter requires a finding of gross or criminal negligence. (See Bench Notes to CALCRIM No. 581, *Involuntary Manslaughter: Murder Not Charged*; Pen. Code, § 26, subd. 5 [accident requires no "culpable negligence"].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, § 242.

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 212.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.16 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.01[1][b], [g], 142.02[2][a] (Matthew Bender).

520. First or Second Degree Murder With Malice Aforethought (Pen. Code, § 187)

The defendant is charged [in Count __] with murder [in violation of Penal Code section 187].

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

[1A. The defendant committed an act that caused the death of (another person/ [or] a fetus);]

[OR]

[1B. The defendant had a legal duty to (help/care for/rescue/warn/maintain the property of/ _____ *<insert other required action[s]>***) _____***<insert description of decedent/person to whom duty is owed>* and the defendant failed to perform that duty and that failure caused the death of (another person/ [or] a fetus);]**

[AND]

2. When the defendant (acted/[or] failed to act), (he/she) had a state of mind called malice aforethought(;/.)

<Give element 3 when instructing on justifiable or excusable homicide.>
[AND

3. (He/She) killed without lawful (excuse/[or] justification).]

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.

The defendant had *express malice* if (he/she) unlawfully intended to kill.

The defendant had *implied malice* if:

1. (He/She) intentionally (committed the act/[or] failed to act);

2. **The natural and probable consequences of the (act/[or] failure to act) were dangerous to human life;**

3. **At the time (he/she) (acted/[or] failed to act), (he/she) knew (his/her) (act/[or] failure to act) was dangerous to human life;**

AND

4. **(He/She) deliberately (acted/[or] failed to act) with conscious disregard for (human/ [or] fetal) life.**

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

[It is not necessary that the defendant be aware of the existence of a fetus to be guilty of murdering that fetus.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

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

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

[(A/An) _____<*insert description of person owing duty*> **has a legal duty to (help/care for/rescue/warn/maintain the property of/** _____ <*insert other required action[s]*>**)** _____<*insert description of decedent/person to whom duty is owed*>**.]**

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

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

<Give the following bracketed paragraph if there is substantial evidence of first degree murder>

[If you decide that the defendant committed murder, it is murder of the second degree, unless the People have proved beyond a reasonable doubt that it is murder of the first degree as defined in CALCRIM No. ___ *<insert number of appropriate first degree murder instruction>*.**]**

New January 2006; Revised August 2009, October 2010, February 2013, August 2013, September 2017, March 2019, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the first two elements of the crime. If there is sufficient evidence of excuse or justification, the court has a **sua sponte** duty to include the third, bracketed element in the instruction. (*People v. Frye* (1992) 7 Cal.App.4th 1148, 1155–1156 [10 Cal.Rptr.2d 217].) The court also has a **sua sponte** duty to give any other appropriate defense instructions. (See CALCRIM Nos. 505–627, and CALCRIM Nos. 3470–3477.)

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

If the prosecution's theory of the case is that the defendant committed murder based on his or her failure to perform a legal duty, the court may give element 1B.

Review the Bench Notes to CALCRIM No. 582, *Involuntary Manslaughter: Failure to Perform Legal Duty—Murder Not Charged*.

If the defendant is charged with first degree murder, give this instruction and CALCRIM No. 521, *First Degree Murder*. If the defendant is charged with second degree murder, no other instruction need be given.

If the defendant is also charged with first ~~or second~~ degree felony murder, instruct on th<u>at</u>~~ese~~ crime~~s~~ and give CALCRIM No. 548, *Murder: Alternative Theories*.

AUTHORITY

- Elements ▸ Pen. Code, § 187.
- Malice ▸ Pen. Code, § 188; *People v. Dellinger* (1989) 49 Cal.3d 1212, 1217–1222 [264 Cal.Rptr. 841, 783 P.2d 200]; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 103–105 [13 Cal.Rptr.2d 864, 840 P.2d 969]; *People v. Blakeley* (2000) 23 Cal.4th 82, 87 [96 Cal.Rptr.2d 451, 999 P.2d 675].
- Causation ▸ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274].
- Fetus Defined ▸ *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Ill Will Not Required for Malice ▸ *People v. Sedeno* (1974) 10 Cal.3d 703, 722 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Breverman* (1998) 19 Cal.4th 142, 163 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Prior Version of This Instruction Upheld ▸ *People v. Genovese* (2008) 168 Cal.App.4th 817, 831 [85 Cal.Rptr.3d 664].

LESSER INCLUDED OFFENSES

- Voluntary Manslaughter ▸ Pen. Code, § 192(a).
- Involuntary Manslaughter ▸ Pen. Code, § 192(b).
- Attempted Murder ▸ Pen. Code, §§ 663, 189.
- Sentence Enhancements and Special Circumstances Not Considered in Lesser Included Offense Analysis ▸ *People v. Boswell* (2016) 4 Cal.App.5th 55, 59-60 [208 Cal.Rptr.3d 244].

Gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5(a)) is not a lesser included offense of murder. (*People v. Sanchez* (2001) 24 Cal.4th 983, 988–992 [103 Cal.Rptr.2d 698, 16 P.3d 118].) Similarly, child abuse homicide (Pen. Code, § 273ab) is not a necessarily included offense of murder. (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 744 [125 Cal.Rptr.2d 618].)

RELATED ISSUES

Causation—Foreseeability

Authority is divided on whether a causation instruction should include the concept of foreseeability. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 362–363 [43 Cal.Rptr.2d 135]; *People v. Temple* (1993) 19 Cal.App.4th 1750, 1756 [24 Cal.Rptr.2d 228] [refusing defense-requested instruction on foreseeability in favor of standard causation instruction]; but see *People v. Gardner* (1995) 37 Cal.App.4th 473, 483 [43 Cal.Rptr.2d 603] [suggesting the following language be used in a causation instruction: "[t]he death of another person must be foreseeable in order to be the natural and probable consequence of the defendant's act"].) It is clear, however, that it is error to instruct a jury that foreseeability is immaterial to causation. (*People v. Roberts* (1992) 2 Cal.4th 271, 315 [6 Cal.Rptr.2d 276, 826 P.2d 274] [error to instruct a jury that when deciding causation it "[w]as immaterial that the defendant could not reasonably have foreseen the harmful result"].)

Second Degree Murder of a Fetus

The defendant does not need to know a woman is pregnant to be convicted of second degree murder of her fetus. (*People v. Taylor* (2004) 32 Cal.4th 863, 868 [11 Cal.Rptr.3d 510, 86 P.3d 881] ["[t]here is no requirement that the defendant specifically know of the existence of each victim."]) "[B]y engaging in the conduct he did, the defendant demonstrated a conscious disregard for all life, fetal or otherwise, and hence is liable for all deaths caused by his conduct." (*Id.* at p. 870.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 96-101, 112-113.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04, Ch. 142, *Crimes Against the Person,* § 142.01 (Matthew Bender).

524 Second Degree Murder: Peace Officer (Pen. Code, § 190(b), (c))

If you find the defendant guilty of second degree murder [as charged in Count __], you must then decide whether the People have proved the additional allegation that (he/she) murdered a peace officer.

To prove this allegation the People must prove that:

1. _____ *<insert officer's name, excluding title>* **was a peace officer lawfully performing (his/her) duties as a peace officer;**

[AND]

2. **When the defendant killed** _____ *<insert officer's name, excluding title>***, the defendant knew, or reasonably should have known, that** _____ *<insert officer's name, excluding title>* **was a peace officer who was performing (his/her) duties(;/.)**

<Give element 3 when defendant charged with Pen. Code, § 190(c)>
[AND

3. **The defendant (intended to kill the peace officer/ [or] intended to inflict great bodily injury on the peace officer/ [or] personally used a (deadly or dangerous weapon/ [or] firearm) in the commission of the offense).]**

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

[A *deadly or dangerous weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[Someone *personally uses* a (deadly weapon/ [or] firearm) if he or she intentionally does any of the following:

1. **Displays the weapon in a menacing manner;**

2. **Hits someone with the weapon;**

OR

3. **Fires the weapon.]**

[The People allege that the defendant _____ *<insert all of the factors from element 3 when multiple factors are alleged>***. You may not find the defendant guilty unless you all agree that the People have proved at least one of these alleged facts and you all agree on which fact or facts were proved. You do not need to specify the fact or facts in your verdict.]**

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

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

[The duties of (a/an) _____ *<insert title of peace officer>* **include** _____ *<insert job duties>***.]**

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>
[A peace officer is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

New January 2006; Revised August 2009, February 2013, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give ~~this~~ an instruction defining the elements of the sentencing enhancement. (See *People v. Marshall* (2000) 83 Cal.App.4th

186, 193–195 [99 Cal.Rptr.2d 441]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 475–476, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

If the defendant is charged under Penal Code section 190(b), give only elements 1 and 2. If the defendant is charged under Penal Code section 190(c), give all three elements, specifying the appropriate factors in element 3, and give the appropriate definitions, which follow in brackets. Give the bracketed unanimity instruction if the prosecution alleges more than one factor in element 3.

In order to be "engaged in the performance of his or her duties," a peace officer must be acting lawfully. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) "[D]isputed facts bearing on the issue of legal cause must be submitted to the jury considering an engaged-in-duty element." *(Ibid.)* If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of the arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651].) If lawful performance is an issue, give the bracketed paragraph on lawful performance and the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

"Peace officer," as used in this statute, means "as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5." (Pen. Code, § 190(b) & (c).)

The court may give the bracketed sentence that begins, "The duties of a _____ <*insert title . . . .*> include," on request. The court may insert a description of the officer's duties such as "the correct service of a facially valid

search warrant." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr. 729, 800 P.2d 1159].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

AUTHORITY

- Second Degree Murder of a Peace Officer. ▸ Pen. Code, § 190(b) & (c).
- Personally Used Deadly or Dangerous Weapon. ▸ Pen. Code, § 12022.
- Personally Used Firearm. ▸ Pen. Code, § 12022.5.
- Personal Use. ▸ Pen. Code, § 1203.06(b)(2).
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 164.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.15[2] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* § 87.13[7] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[4][c] (Matthew Bender).

D. FELONY MURDER

Introduction to Felony-Murder Series

~~The Supreme Court recently clarified the temporal component necessary for liability for a death under the felony-murder rule. (*People v. Wilkins* (2013) 56 Cal.4th 333, 344.) In that case, the Supreme Court noted the limited usefulness of former CALCRIM No. 549, *Felony Murder: One Continuous Transaction—Defined*, which was based on the facts of *People v. Cavitt* (2004) 33 Cal.4th 187, 208, in which a non-killer fled, leaving behind an accomplice who killed. (*People v. Wilkins, supra,* at p. 342.) To avoid any potential confusion, the committee has deleted that instruction and replaced it appropriate bench note references. If the defendant committed the homicidal act and fled, that killing did not occur in the commission of the felony if the fleeing felon has reached a place of temporary safety. (*People v. Wilkins, supra,* at p. 345.)~~

Senate Bill No. 1437 (2017-2018 Reg. Sess.) substantially changed accomplice liability for felony murder. Malice may no longer be imputed simply from participation in a designated crime. (Pen. Code, § 188(a)(3).) If a defendant participated in the commission or attempted commission of a designated felony when a person was killed, the defendant is now liable under the felony-murder rule only if: (1) the defendant was the actual killer; (2) the defendant was not the actual killer but, *with intent to kill*, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in committing murder in the first degree; or (3) the defendant was a major participant in the underlying designated felony *and* acted with reckless indifference to human life. (Pen. Code, § 189(e).) These restrictions do not apply when the victim was a peace officer and the defendant knew or reasonably should have known that the victim was a peace officer acting within the performance of his or her duties. (Pen. Code, § 189(f).)

As a result of these changes, the committee has modified CALCRIM Nos. 540B and 540C to incorporate the additional statutory elements for accomplice liability. The committee has also removed CALCRIM Nos. 541A, 541B, and 541C which addressed second degree felony murder. These instructions are included in an appendix, along with the former versions of Nos. 540A, 540B, and 540C.

The ~~committee has provided~~ three separate instructions for ~~both first and second degree~~ felony murder ~~. These instructions~~ present the following options:

A. Defendant Allegedly Committed Fatal Act

B. Coparticipant Allegedly Committed Fatal Act

C. Other Acts Allegedly Caused Death

For a simple case in which the defendant allegedly personally caused the death by committing a direct act of force or violence against the victim, the court may use ~~an option A~~ CALCRIM No. 540A~~instruction~~. This ~~option~~ instruction contains the least amount of bracketed material and requires the least amount of modification by the court.

In a case where the prosecution alleges that a participant in the felony other than the defendant caused the death~~is a "nonkiller cofelon" liable under the felony-murder rule for a death caused by another participant in the felony, ,then~~ the court must use CALCRIM No. 540B~~an option B instruction~~. This ~~option~~ instruction allows the court to instruct that the defendant may have committed the underlying felony or may have aided and abetted or conspired to commit an underlying felony that actually was committed by a coparticipant.

If the evidence indicates that either the defendant or a coparticipant may have committed the fatal act, the court should give both CALCRIM No. 540A~~option A~~ and CALCRIM No. 540B~~option B instructions~~.

In addition, the committee has provided CALCRIM No. 540C ~~option C instructions~~ to account for the unusual factual situations where a victim dies during the course of a felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants. (See *People v. Billa* (2003) 31 Cal.4th 1064, 1072.) ~~Option C~~ This instruction is the most complicated of the three ~~options~~ instructions~~provided~~. Thus, although ~~option C~~ CALCRIM No. 540C is broad enough to cover most felony-murder scenarios, the committee recommends using ~~an option A or B instruction~~ CALCRIM Nos. 540A or 540B whenever appropriate to avoid providing the jury with unnecessarily complicated instructions.

In *People v. Wilkins* (2013) 56 Cal.4th 333, 344, the Supreme Court clarified the temporal component necessary for liability for a death under the felony-murder rule and noted the limited usefulness of former CALCRIM No. 549, *Felony Murder, One Continuous Transaction—Defined*. To avoid any potential confusion, the committee has deleted that instruction and replaced it with appropriate bench note references. If the defendant committed the homicidal act and fled, that killing did not occur in the commission of the felony if the fleeing felon has reached a place of temporary safety. (*People v. Wilkins, supra,* at p. 345.)

540A. Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act (Pen. Code, § 189)

The defendant is charged [in Count __] with murder, under a theory of first degree felony murder.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant committed [or attempted to commit] _____** *<insert felony or felonies from Pen. Code, § 189>***;**

2. **The defendant intended to commit _____** *<insert felony or felonies from Pen. Code, § 189>***;**

AND

3. **While committing [or attempting to commit] _____,** *<insert felony or felonies from Pen. Code, § 189>* **the defendant caused the death of another person.**

A person [who was the actual killer] may be guilty of felony murder even if the killing was unintentional, accidental, or negligent.

To decide whether the defendant committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.** *<Make certain that all appropriate instructions on all underlying felonies are given.>*

[The defendant must have intended to commit the (felony/felonies) of _____ *<insert felony or felonies from Pen. Code, § 189>* **before or at the time that (he/she) caused the death.]**

<If the facts raise an issue whether the commission of the felony continued while a defendant was fleeing the scene, give the following sentence instead of CALCRIM No. 3261, While Committing a Felony: Defined—Escape Rule.>

[The crime of _____ <*insert felony or felonies from Pen. Code, § 189*> continues until a defendant has reached a place of temporary safety.]

[It is not required that the person die immediately, as long as the act causing death) occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

New January 2006; Revised April 2010, August 2013, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give ~~this~~ an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].) Give all appropriate instructions on all underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense.

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

When giving this instruction with CALCRIM No. 540B or with CALCRIM No. 540C, give the bracketed phrase [who was the actual killer].

The felonies that support a charge of first degree felony murder are arson, rape, carjacking, robbery, burglary, kidnapping, mayhem, train wrecking, sodomy, lewd or lascivious acts on a child, oral copulation, and sexual penetration. (See Pen. Code, § 189(a).)

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have intended to commit the felony." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** <*insert felony or felonies from Pen. Code, § 189*> **[or attempted** <*insert felony or felonies from Pen. Code, § 189*>**]. The connection between the cause of death and the** <*insert felony or felonies from Pen. Code, § 189*> **[or attempted** <*insert felony or felonies from Pen. Code, § 189*>**] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203–204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, also give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

Drive-By Shooting

The drive-by shooting clause in Penal Code section 189 is not an enumerated felony for purposes of the felony-murder rule. (*People v. Chavez* (2004) 118 Cal.App.4th 379, 386–387 [12 Cal.Rptr.3d 837].) A finding of a specific intent to kill is required in order to find first degree murder under this clause. *(Ibid.)*

~~If the prosecutor is proceeding under both malice and felony-murder theories, also give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be~~

~~given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)~~

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that the defendant committed the act causing the death.

If the prosecution alleges that another coparticipant in the felony committed the fatal act, give CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*. If the evidence indicates that either the defendant or a coparticipant may have committed the fatal act, give both instructions.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [a simultaneous or coincidental death is not a killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

AUTHORITY

- Felony Murder: First Degree ▸ Pen. Code, § 189.
- Specific Intent to Commit Felony Required ▸ *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Merger Doctrine Does Not Apply to First Degree Felony Murder ▸ *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].

RELATED ISSUES

Does Not Apply Where Felony Committed Only to Facilitate Murder
If a felony, such as robbery, is committed merely to facilitate an intentional murder, then the felony-murder rule does not apply. (*People v. Green* (1980) 27 Cal.3d 1, 61 [164 Cal.Rptr. 1, 609 P.2d 468], disapproved on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99] [robbery committed to facilitate murder did not satisfy felony-murder special circumstance].) If the defense requests a special instruction on this point, see CALCRIM No. 730, *Special Circumstances: Murder in Commission of Felony*.

No Duty to Instruct on Lesser Included Offenses of Uncharged Predicate Felony
"Although a trial court on its own initiative must instruct the jury on lesser included offenses of *charged* offenses, this duty does not extend to *uncharged* offenses relevant only as predicate offenses under the felony-murder doctrine." (*People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769] [original italics]; see *People v. Cash* (2002) 28 Cal.4th 703, 736–737 [122 Cal.Rptr.2d 545] [no duty to instruct on theft as lesser included offense of uncharged predicate offense of robbery].)

Auto Burglary
Auto burglary may form the basis for a first degree felony-murder conviction. (*People v. Fuller* (1978) 86 Cal.App.3d 618, 622–623, 628 [150 Cal.Rptr. 515] [noting problems of applying felony-murder rule to nondangerous daytime auto burglary].)

Duress
"[D]uress can, in effect, provide a defense to murder on a felony-murder theory by negating the underlying felony." (*People v. Anderson* (2002) 28 Cal.4th 767, 784 [122 Cal.Rptr.2d 587, 50 P.3d 368] [dictum]; see also CALCRIM No. 3402, *Duress or Threats*.)

Imperfect Self-Defense
Imperfect self-defense is not a defense to felony murder because malice aforethought, which imperfect self-defense negates, is not an element of felony murder. (See *People v. Tabios* (1998) 67 Cal.App.4th 1, 6–9 [78 Cal.Rptr.2d 753], disapproved on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1198-1199 [91 Cal.Rptr.3d 106; 203 P.3d 425].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 151-168.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* § 87.13[7] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

540B Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act (Pen. Code, § 189)

<Give the following introductory sentence when not giving CALCRIM No. 540A.>
[The defendant is charged [in Count __] with murder, under a theory of first degree felony murder.]

The defendant may [also] be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit)** _____ *<insert felony or felonies from Pen. Code, § 189>*;

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit)** _____ *<insert felony or felonies from Pen. Code, § 189>*;

3. **If the defendant did not personally commit [or attempt to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>*, **then a perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), committed [or attempted to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>*;

~~**AND**~~

4. **While committing [or attempting to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>*, **the ~~[defendant or]~~ perpetrator caused the death of another person~~.~~;**

<Alternative for Pen. Code § 189(e)(2) and (e)(3) liability>
[5A. The defendant intended to kill;

AND

5B. The defendant (aided and abetted[,])/ [or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of first degree murder(./;)]

[OR]

[(5A/6A). The defendant was a major participant in the _____ *<insert felony or felonies from Pen. Code § 189>*;

AND

(5B/6B). When the defendant participated in the _____ *<insert felony or felonies from Pen. Code § 189>*, **(he/she) acted with reckless indifference to human life(./;)]**

[OR]

<Alternative for Pen. Code § 189(f) liability>
[(5A/6A/7A). _____ <*insert officer's name, excluding title***> was a peace officer lawfully performing (his/her) duties as a peace officer;**

AND

(5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____ <*insert officer's name, excluding title***> was a peace officer performing (his/her) duties.]**

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*, **please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.**

~~*<Make certain that all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy are given.>*~~

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ *<insert felony or felonies from Pen. Code, § 189>* **before or at the time ~~that (he/she) caused~~ of the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

[You may not find the defendant guilty of felony murder unless all of you agree that the defendant or a perpetrator caused the death of another. You do not all need to agree, ~~-~~however, whether the defendant or a perpetrator caused that death.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies>

[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[When you decide whether the defendant was a *major participant*, consider all the evidence. Among the factors you may consider are:

1. **What was the defendant's role in planning the crime that led to the death[s]?**
2. **What was the defendant's role in supplying or using lethal weapons?**
3. **What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?**
4. **Was the defendant in a position to facilitate or to prevent the death?**
5. **Did the defendant's action or inaction play a role in the death?**
6. **What did the defendant do after lethal force was used?**

[7. _____ *<insert any other relevant factors.>***]**

No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.]

<Give the following instructions when Pen. Code § 189(f) applies>
[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a peace officer.]**

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

[The duties of (a/an) _____ *<insert title of peace officer>* **include** _____ *<insert job duties>***.]**

New January 2006; Revised April 2010, August 2013, February 2015, September 2019

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give ~~this~~ an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If the prosecution's theory is that the defendant, as well as the perpetrator, committed or attempted to commit the underlying felony or felonies, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in

element 2. In addition, in the paragraph that begins with "To decide whether," select both "the defendant and the perpetrator." Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the defendant and the perpetrator each committed [the crime] if . . . ."

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirements in element 2. In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the

bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***]. The connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that a coparticipant in the felony committed the act causing the death.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court of Tulare County* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

Related Instructions

CALCRIM No. 400 et seq., *Aiding and Abetting: General Principles*.

CALCRIM No. 415 et seq., *Conspiracy*.

AUTHORITY

- Felony Murder: First Degree. ▸ Pen. Code, § 189.
- Specific Intent to Commit Felony Required. ▸ *People v. Gutierrez (*2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. ▸ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Logical Nexus Between Felony and Killing. ▸ *People v. Dominguez* (2006) 39 Cal.4th 1141]; *People v. Cavitt* (2004) 33 Cal.4th 187, 197–206].

- Merger Doctrine Does Not Apply to First Degree Felony Murder. ▸ *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. ▸ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▸ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

RELATED ISSUES

Conspiracy Liability—Natural and Probable Consequences

In the context of nonhomicide crimes, a coconspirator is liable for any crime committed by a member of the conspiracy that was a natural and probable consequence of the conspiracy. (*People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388].) This is analogous to the rule in aiding and abetting that the defendant may be held liable for any unintended crime that was the natural and probable consequence of the intended crime. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].) In the context of felony murder, the Supreme Court has explicitly held that the natural and probable consequences doctrine does not apply to a defendant charged with felony murder based on aiding and abetting the underlying felony. (See *People v. Anderson* (1991) 233 Cal.App.3d 1646, 1658 [285 Cal.Rptr. 523].) The court has not explicitly addressed whether the natural and probable consequences doctrine continues to limit liability for felony murder where the defendant's liability is based solely on being a member of a conspiracy. In *People v. Pulido* (1997) 15 Cal.4th 713, 724 [63 Cal.Rptr.2d 625, 936 P.2d 1235], the court stated in dicta, "[f]or purposes of complicity in a cofelon's homicidal act, the conspirator and the abettor stand in the same position. [Citation; quotation marks omitted.]

~~In *People v. Pulido* (1997) 15 Cal.4th 713, 724 [63 Cal.Rptr.2d 625, 936 P.2d 1235], the court stated in dicta, "[f]or purposes of complicity in a cofelon's homicidal act, the conspirator and the abettor stand in the same position. [Citation; quotation marks omitted.] In stating the rule of felony-murder complicity we have not distinguished accomplices whose responsibility for the underlying felony was pursuant to prior agreement (conspirators) from those who intentionally assisted without such agreement (aiders and abettors). [Citations]." In the court's two most recent opinions on felony-murder complicity, the court refers to the liability of "cofelons" or "accomplices" without reference to whether liability is based on directly committing the offense, aiding and abetting the offense, or conspiring to commit the offense. (*People v. Cavitt* (2004) 33 Cal.4th 187, 197–205 [14~~

~~Cal.Rptr.3d 281, 91 P.3d 222]; *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542].) On the other hand, in both of these cases, the defendants were present at the scene of the felony and directly committed the felonious acts. (*People v. Cavitt, supra,* 33 Cal.4th at p. 194; *People v. Billa, supra,* 31 Cal.4th at p. 1067.) Thus, the court has not had occasion recently to address a situation in which the defendant was convicted of felony murder based solely on a theory of coconspirator liability.~~

~~The requirement for a logical nexus between the felony and the act causing the death, articulated in *People v. Cavitt, supra,* 33 Cal.4th at p. 193, may be sufficient to hold a conspiring defendant liable for the resulting death under the felony-murder rule. However, *Cavitt* did not clearly answer this question. Nor has any case explicitly held that the natural and probable consequences doctrine does not apply in the context of felony murder based on conspiracy.~~

~~Thus, if the trial court is faced with a factual situation in which the defendant's liability is premised solely on being a member of a conspiracy in which another coparticipant killed an individual, the committee recommends that the court do the following: (1) give optional element on logical connection provided above; (2) request briefing and review the current law on conspiracy liability and felony murder; and (3) at the court's discretion, add as an additional element: "The act causing the death was a natural and probable consequence of the plan to commit _____ <*insert felony or felonies from Pen. Code, § 189*>."~~

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 98, 109.

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 151–168, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

540C Felony Murder: First Degree—Other Acts Allegedly Caused Death (Pen. Code, § 189)

The defendant is charged [in Count __] with first degree murder, under a theory of felony murder.

The defendant may be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit)** _____ *<insert felony or felonies from Pen. Code, § 189>*;

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit)** _____ *<insert felony or felonies from Pen. Code, § 189>*;

<Give element 3 if defendant did not personally commit or attempt felony.>

[3. A perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), personally committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*;]

~~**AND**~~

(3/4). The commission [or attempted commission] of the _____ *<insert felony or felonies from Pen. Code, § 189>* **was a substantial factor in causing the death of another person;**

<Alternative for Pen. Code § 189(e)(2) and (e)(3) liability>

[(4A/5A). The defendant intended to kill;

AND

(4B/5B). The defendant (aided and abetted[,]/[or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of murder(./;)]

[OR]

[(4A/5A/6A). The defendant was a major participant in the _____ <*insert felony or felonies from Pen. Code § 189*>;

AND

(4B/5B/6B). When the defendant participated in the _____ <*insert felony or felonies from Pen. Code § 189*>, (he/she) acted with reckless indifference to human life(./;)]

[OR]

<Alternative for Pen. Code § 189(f) liability>
[(4A/5A/6A/7A). _____ <*insert officer's name, excluding title*> was a peace officer lawfully performing (his/her) duties as a peace officer;

AND

(4B/5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____ <*insert officer's name, excluding title*> was a peace officer performing (his/her) duties.]

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*, **please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.**

~~*<Make certain that all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy are given.>*~~

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

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

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ <*insert felony or felonies from Pen. Code, § 189*> before or at the time ~~that (he/she) caused~~ of the death.]

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies>

[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[When you decide whether the defendant was a *major participant*, consider all the evidence. Among the factors you may consider are:

1. **What was the defendant's role in planning the crime that led to the death[s]?**
2. **What was the defendant's role in supplying or using lethal weapons?**
3. **What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?**

4. Was the defendant in a position to facilitate or to prevent the death?
5. Did the defendant's action or inaction play a role in the death?
6. What did the defendant do after lethal force was used?
[7. _____ <insert any other relevant factors.>]

No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.]

<Give the following instructions when Pen. Code § 189(f) applies>
[A person who is employed as a police officer by _____ <insert name of agency that employs police officer> is a peace officer.]

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

[The duties of (a/an) _____ <insert title of peace officer> include _____ <insert job duties>.]

New January 2006; Revised April 2010, August 2013, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give ~~this~~ an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401]; see generally, *People v. Cervantes* (2001) 26 Cal.4th 860, 866–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Because causation is likely to be an issue in any case in which this instruction is given, the committee has included the paragraph that begins with "An act causes death if." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with "There may be more than one cause of death." (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

If the prosecution's theory is that the defendant committed or attempted to commit the underlying felony, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select "the defendant" in the first sentence. Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense.

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. Give the bracketed sentence at the beginning of the instruction that begins with "The defendant may be guilty of murder." In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***]. The connection between the cause of death and the** _____ *<insert felony or felonies from Pen. Code, § 189>* **[or attempted** _____ *<insert felony or felonies from Pen. Code, § 189>***] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the alleged victim dies during the course of the felony as a result of a heart attack, fire, or a similar cause rather than as a result of some act of force or violence committed against the victim by one of the participants in the felony. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

See the Bench Notes to CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act,* for a discussion of other instructions to use if the evidence indicates a person committed an act of force or violence causing the death.

AUTHORITY

- Felony Murder: First Degree. ▸ Pen. Code, § 189.
- Specific Intent to Commit Felony Required. ▸ *People v. Gutierrez (2*002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. ▸ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Death Caused by Felony but Not by Act of Force or Violence Against Victim. ▸ *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79

P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].

- Logical Nexus Between Felony and Killing. ▸ *People v. Dominguez* (2006) 39 Cal.4th 1141 [47 Cal.Rptr.3d 575, 140 P.3d 866]; *People v. Cavitt* (2004) 33 Cal.4th 187, 197–206 [14 Cal.Rptr.3d 281, 91 P.3d 222].
- Merger Doctrine Does Not Apply to First Degree Felony Murder. ▸ *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. ▸ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▸ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

RELATED ISSUES

See the Related Issues section ~~to~~ of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act,* and CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 118–168.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.04, 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

541A. Felony Murder: Second Degree—Defendant Allegedly Committed Fatal Act

---

The defendant is charged [in Count __] with murder, under a theory of felony murder.

To prove that the defendant is guilty of second degree murder under this theory, the People must prove that:

1. **The defendant committed [or attempted to commit] _____** *<insert inherently dangerous felony or felonies>***;**

2. **The defendant intended to commit _____** *<insert inherently dangerous felony or felonies>***;**

AND

3. **The defendant did an act that caused the death of another person.**

A person may be guilty of felony murder even if the killing was unintentional, accidental, or negligent.

To decide whether the defendant committed [or attempted to commit] _____ *<insert inherently dangerous felony or felonies>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. You must apply those instructions when you decide whether the People have proved second degree murder under a theory of felony murder.**

<Make certain that all appropriate instructions on all underlying felonies are given.>

[The defendant must have intended to commit the (felony/felonies) of _____ *<insert inherently dangerous felony or felonies>* **before or at the time of the act causing the death.]**

<If the facts raise an issue whether the commission of the felony continued while a defendant was fleeing the scene, give the following sentence instead of CALCRIM No. 3261, While Committing a Felony: Defined—Escape Rule.>
[The crime of_____ *<insert inherently dangerous felony or felonies>* **continues until a defendant has reached a place of temporary safety.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]
[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

New January 2006; Revised August 2009, February 2012, August 2013

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].) Give all appropriate instructions on all underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense.

Insert the appropriate, nonassaultive, inherently dangerous felony or felonies in the blanks provided in accordance with the Supreme Court's ruling in *People v. Chun* (2009) 45 Cal.4th 1172, 1199 [91 Cal.Rptr.3d 106, 203 P.3d 425] [when underlying felony is assaultive in nature, felony merges with homicide and cannot be basis of a felony-murder instruction].

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have intended to commit the felony."

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the

bracketed sentence that begins with "It is not required that the person killed be" on request.

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ <*insert inherently dangerous felony or felonies*> **[or attempted** _____ <*insert inherently dangerous felony or felonies*>**]. The connection between the cause of death and the** _____ <*insert inherently dangerous felony or felonies*> **[or attempted** _____ <*insert inherently dangerous felony or felonies*>**] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that the defendant committed the act causing the death.

If the prosecution alleges that another coparticipant in the felony committed the fatal act, give CALCRIM No. 541B, *Felony Murder: Second Degree—Coparticipant Allegedly Committed Fatal Act*. If the evidence indicates that either the defendant or a coparticipant may have committed the fatal act, give both instructions.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 541C, *Felony Murder: Second Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [a simultaneous or coincidental death is not a killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

AUTHORITY

- Inherently Dangerous Felonies ▸ *People v. Satchell* (1971) 6 Cal.3d 28, 33–41 [98 Cal.Rptr. 33, 489 P.2d 1361], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Henderson* (1977) 19 Cal.3d 86, 93 [137 Cal.Rptr. 1, 560 P.2d 1180], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Patterson* (1989) 49 Cal.3d 615, 622–625 [262 Cal.Rptr. 195, 778 P.2d 549].
- Specific Intent to Commit Felony Required ▸ *People v. Gutierrez (*2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Merger Doctrine Applies if Elements of Crime Have Assaultive Aspect ▸ *People v. Chun* (2009) 45 Cal.4th 1172, 1199 [91 Cal.Rptr.3d 106, 203 P.3d 425].

LESSER INCLUDED OFFENSES

- Voluntary Manslaughter ▸ Pen. Code, § 192(a).
- Involuntary Manslaughter ▸ Pen. Code, § 192(b).
- Attempted Murder ▸ Pen. Code, §§ 663, 189.

RELATED ISSUES

Second Degree Felony Murder: Inherently Dangerous Felonies

The second degree felony-murder doctrine is triggered when a homicide occurs during the commission of a felony that is inherently dangerous to human life. (*People v. Satchell* (1971) 6 Cal.3d 28, 33–41 [98 Cal.Rptr. 33, 489 P.2d 1361] and *People v. Henderson* (1977) 19 Cal.3d 86, 93 [137 Cal.Rptr. 1, 560 P.2d 1180], both overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470,

484 [76 Cal.Rptr.2d 180, 957 P.2d 869].) In *People v. Burroughs* (1984) 35 Cal.3d 824, 833 [201 Cal.Rptr. 319, 678 P.2d 894], the court described an inherently dangerous felony as one that cannot be committed without creating a substantial risk that someone will be killed. However, in *People v. Patterson* (1989) 49 Cal.3d 615, 618, 626–627 [262 Cal.Rptr. 195, 778 P.2d 549], the court defined an inherently dangerous felony as "an offense carrying a high probability that death will result." (See *People v. Coleman* (1992) 5 Cal.App.4th 646, 649–650 [7 Cal.Rptr.2d 40] [court explicitly adopts *Patterson* definition of inherently dangerous felony].)

Whether a felony is inherently dangerous is a legal question for the court to determine. (See *People v. Schaefer* (2004) 118 Cal.App.4th 893, 900–902 [13 Cal.Rptr.3d 442] [rule not changed by *Apprendi*].) In making this determination, the court should assess "the elements of the felony in the abstract, not the particular facts of the case," and consider the statutory definition of the felony in its entirety. (*People v. Satchell, supra,* 6 Cal.3d at p. 36; *People v. Henderson, supra,* 19 Cal.3d at pp. 93–94.) If the statute at issue prohibits a diverse range of conduct, the court must analyze whether the entire statute or only the part relating to the specific conduct at issue is applicable. (See *People v. Patterson, supra,* 49 Cal.3d at pp. 622–625 [analyzing Health & Saf. Code, § 11352, which prohibits range of drug-related behavior, and holding that only conduct at issue should be considered when determining dangerousness].)

The following felonies have been found inherently dangerous for purposes of second degree felony murder (but note that since Proposition 115 amended Penal Code section 189 in 1990, that code section includes kidnapping in its list of first degree felony murder felonies):

- Attempted Escape From Prison by Force or Violence ‣ Pen. Code, § 4530; *People v. Lynn* (1971) 16 Cal.App.3d 259, 272 [94 Cal.Rptr. 16]; *People v. Snyder* (1989) 208 Cal.App.3d 1141, 1143–1146 [256 Cal.Rptr. 601].
- Furnishing Poisonous Substance ‣ Pen. Code, § 347; *People v. Mattison* (1971) 4 Cal.3d 177, 182–184 [93 Cal.Rptr. 185, 481 P.2d 193].
- Kidnapping for Ransom, Extortion, or Reward ‣ Pen. Code, § 209(a); *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1227–1228 [277 Cal.Rptr. 382].
- Manufacturing Methamphetamine ‣ Health & Saf. Code, § 11379.6(a); *People v. James* (1998) 62 Cal.App.4th 244, 270–271 [74 Cal.Rptr.2d 7].
- Reckless Possession of Destructive or Explosive Device ‣ Pen. Code, § 18715; *People v. Morse* (1992) 2 Cal.App.4th 620, 646, 655 [3 Cal.Rptr.2d 343].
- Shooting Firearm in Grossly Negligent Manner ‣ Pen. Code, § 246.3; *People v. Clem* (2000) 78 Cal.App.4th 346, 351 [92 Cal.Rptr.2d 727];

People v. Robertson (2004) 34 Cal.4th 156, 173 [17 Cal.Rptr.3d 604, 95 P.3d 872] [merger doctrine does not apply].

- Shooting at Inhabited Dwelling ‣ Pen. Code, § 246; *People v. Tabios* (1998) 67 Cal.App.4th 1, 9–10 [78 Cal.Rptr.2d 753].
- Shooting at Occupied Vehicle ‣ Pen. Code, § 246; *People v. Tabios* (1998) 67 Cal.App.4th 1, 10–11 [78 Cal.Rptr.2d 753].
- Shooting From Vehicle at Inhabited Dwelling ‣ *People v. Hansen* (1994) 9 Cal.4th 300, 311 [36 Cal.Rptr.2d 609, 885 P.2d 1022].

The following felonies have been found to be *not* inherently dangerous for purposes of second degree felony murder:

- Conspiracy to Possess Methedrine ‣ *People v. Williams* (1965) 63 Cal.2d 452, 458 [47 Cal.Rptr. 7, 406 P.2d 647].
- Driving With Willful or Wanton Disregard for Safety While Fleeing a Pursuing Officer ‣ *People v. Howard* (2005) 34 Cal.4th 1129, 1138 [23 Cal.Rptr.3d 306].
- Extortion ‣ Pen. Code, §§ 518, 519; *People v. Smith* (1998) 62 Cal.App.4th 1233, 1237–1238 [72 Cal.Rptr.2d 918].
- False Imprisonment ‣ Pen. Code, § 236; *People v. Henderson* (1977) 19 Cal.3d 86, 92–96 [137 Cal.Rptr. 1, 560 P.2d 1180], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].
- Felon in Possession of Firearm ‣ Pen. Code, § 29800; *People v. Satchell* (1971) 6 Cal.3d 28, 39–41 [98 Cal.Rptr. 33, 489 P.2d 1361], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].
- Felonious Practice of Medicine Without License ‣ *People v. Burroughs* (1984) 35 Cal.3d 824, 830–833 [201 Cal.Rptr. 319, 678 P.2d 894].
- Felony Child Abuse ‣ Pen. Code, § 273a; *People v. Lee* (1991) 234 Cal.App.3d 1214, 1228 [286 Cal.Rptr. 117].
- Felony Escape From Prison Without Force or Violence ‣ Pen. Code, § 4530(b); *People v. Lopez* (1971) 6 Cal.3d 45, 51–52 [98 Cal.Rptr. 44, 489 P.2d 1372].
- Felony Evasion of Peace Officer Causing Injury or Death ‣ Veh. Code, § 2800.3; *People v. Sanchez* (2001) 86 Cal.App.4th 970, 979–980 [103 Cal.Rptr.2d 809].
- Furnishing PCP ‣ Health & Saf. Code, § 11379.5; *People v. Taylor* (1992) 6 Cal.App.4th 1084, 1100–1101 [8 Cal.Rptr.2d 439].
- Grand Theft Under False Pretenses ‣ *People v. Phillips* (1966) 64 Cal.2d 574 [51 Cal.Rptr. 225, 414 P.2d 353], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869].

- Grand Theft From the Person ▸ Pen. Code, § 487(c); *People v. Morales* (1975) 49 Cal.App.3d 134, 142–143 [122 Cal.Rptr. 157].

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 151–168.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

541B. Felony Murder: Second Degree—Coparticipant Allegedly Committed Fatal Act

---

<Give the following introductory sentence when not giving CALCRIM No. 541A.>
[The defendant is charged [in Count __] with murder, under a theory of felony murder.]

The defendant may [also] be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of second degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____** *<insert inherently dangerous felony or felonies>***;**

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____** *<insert inherently dangerous felony or felonies>***;**

3. **The perpetrator committed [or attempted to commit] _____** *<insert inherently dangerous felony or felonies>***;**

AND

4. **The perpetrator did an act that caused the death of another person.**

A person may be guilty of felony murder even if the killing was unintentional, accidental, or negligent.

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ *<insert inherently dangerous felony or felonies>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply**

those instructions when you decide whether the People have proved second degree murder under a theory of felony murder.
<Make certain that all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy are given.>

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ *<insert inherently dangerous felony or felonies>* **before or at the time of the act causing the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the underlying (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

New January 2006; Revised August 2009, August 2013

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

Insert the appropriate, nonassaultive, inherently dangerous felony or felonies in the blanks provided in accordance with the Supreme Court's ruling in *People v. Chun* (2009) 45 Cal.4th 1172 [203 P.3d 425, 91 Cal.Rptr.3d 106] [when underlying felony is assaultive in nature, felony merges with homicide and cannot be basis of a felony-murder instruction].

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

There must be a logical connection between the cause of death and the _____ <*insert inherently dangerous felony or felonies*> [or attempted _____ <*insert inherently dangerous felony or felonies*>]. The connection between the cause of death and the _____ <*insert inherently dangerous felony or felonies*> [or attempted _____ <*insert inherently dangerous felony or felonies*>] must involve more than just their occurrence at the same time and place.]

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecution's theory is that the defendant, as well as the perpetrator, committed or attempted to commit the underlying felony or felonies, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select both "the defendant and the perpetrator." Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the defendant and the perpetrator each committed [the crime] if . . . ."

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirements in element 2. In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206 fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction

pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 p.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the prosecutor is proceeding under both malice and felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that a coparticipant in the felony committed the act causing the death.

If the prosecution alleges that the defendant committed the fatal act, give CALCRIM No. 541A, *Felony Murder: Second Degree—Defendant Allegedly Committed Fatal Act*. If the evidence indicates that either the defendant or a coparticipant may have committed the fatal act, give both instructions.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 541C, *Felony Murder: Second Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see

People v. Gunnerson (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [a simultaneous or coincidental death is not a killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

Related Instructions
CALCRIM No. 400 et seq., *Aiding and Abetting: General Principles*.

CALCRIM No. 415 et seq., *Conspiracy*.

AUTHORITY

- Inherently Dangerous Felonies ▸ *People v. Satchell* (1971) 6 Cal.3d 28, 33–41 [98 Cal.Rptr. 33, 489 P.2d 1361], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Henderson* (1977) 19 Cal.3d 86, 93 [137 Cal.Rptr. 1, 560 P.2d 1180], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Patterson* (1989) 49 Cal.3d 615, 622–625 [262 Cal.Rptr. 195, 778 P.2d 549].
- Specific Intent to Commit Felony Required ▸ *People v. Gutierrez (2*002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury ▸ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim ▸ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].Merger Doctrine Applies if Elements of Crime Have Assaultive Aspect ▸ *People v. Chun* (2009) 45 Cal.4th 1172 [203 P.3d 425, 91 Cal.Rptr.3d 106].

LESSER INCLUDED OFFENSES

- Second Degree Murder ▸ Pen. Code, § 187.
- Voluntary Manslaughter ▸ Pen. Code, § 192(a).

- Involuntary Manslaughter ▸ Pen. Code, § 192(b).
- Attempted Murder ▸ Pen. Code, §§ 663, 189.

RELATED ISSUES

See the Related Issues section of CALCRIM No. 540B, Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act and CALCRIM No. 541A, Felony Murder: Second Degree—Defendant Allegedly Committed Fatal Act.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 98, 109.

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 174.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

541C. Felony Murder: Second Degree—Other Acts Allegedly Caused Death

---

The defendant is charged [in Count __] with murder, under a theory of felony murder.

The defendant may be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of second degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____** *<insert inherently dangerous felony or felonies>*;

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____** *<insert inherently dangerous felony or felonies>*;

<Give element 3 if defendant did not personally commit or attempt felony.>

[3. The perpetrator committed [or attempted to commit] _____ *<insert inherently dangerous felony or felonies>*;]

[AND]

(3/4). The commission [or attempted commission of] the _____ *<insert inherently dangerous felony or felonies>* **caused the death of another person.**

A person may be guilty of felony murder even if the killing was unintentional, accidental, or negligent.

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ *<insert inherently dangerous felony or felonies>*, **please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply**

those instructions when you decide whether the People have proved second degree murder under a theory of felony murder.

<Make certain that all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy are given.>

[The defendant must have (intended to commit[,]/ [or] aided and abetted[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ *<insert inherently dangerous felony or felonies>* **before or at the time of the act causing the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).] An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.

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

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

New January 2006; Revised August 2009, August 2013

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of the underlying felony. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr.

401]; *People v. Cervantes* (2001) 26 Cal.4th 860, 865–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Because causation is likely to be an issue in any case where this instruction is given, the committee has included the paragraph that begins with "An act causes death if." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with "There may be more than one cause of death." (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

Insert the appropriate, nonassaultive, inherently dangerous felony or felonies in the blanks provided in accordance with the Supreme Court's ruling in *People v. Chun* (2009) 45 Cal.4th 1172 [203 P.3d 425, 91 Cal.Rptr.3d 106] [when underlying felony is assaultive in nature, felony merges with homicide and cannot be basis of a felony-murder instruction].

If the prosecution's theory is that the defendant committed or attempted to commit the underlying felony, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select "the defendant" in the first sentence. Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of an instruction on the underlying felony if the defendant is not separately charged with that offense.

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. Give the bracketed sentence at the beginning of the instruction that begins with "The defendant may [also] be guilty of murder." In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of an instruction on the underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21

P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit."

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.
The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ <*insert inherently dangerous felony or felonies*> **[or attempted** _____ <*insert inherently dangerous felony or felonies*>**]. The connection between the cause of death and the** _____ <*insert inherently dangerous felony or felonies*> **[or attempted** _____ <*insert inherently dangerous felony or felonies*>**] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

Related Instructions—Other Causes of Death

This instruction should be used only when the alleged victim dies during the course of the felony as a result of a heart attack, fire, or a similar cause rather than as a result of some act of force or violence committed against the victim by one of the participants in the felony. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [a simultaneous or coincidental death is not a killing].)

See the Bench Notes to CALCRIM No. 541B, *Felony Murder: Second Degree—Defendant Allegedly Committed Fatal Act* for a discussion of other instructions to use if the evidence indicates a person committed an act of force or violence causing the death.

AUTHORITY

- Inherently Dangerous Felonies ‣ *People v. Satchell* (1971) 6 Cal.3d 28, 33–41 [98 Cal.Rptr. 33, 489 P.2d 1361], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Henderson* (1977) 19 Cal.3d 86, 93 [137 Cal.Rptr.1], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Patterson* (1989) 49 Cal.3d 615, 622–625 [262 Cal.Rptr. 195, 778 P.2d 549].
- Specific Intent to Commit Felony Required ‣ *People v. Gutierrez* (*2*002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572]..
- Infliction of Fatal Injury ‣ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim ‣ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Death Caused by Felony but Not by Act of Force or Violence Against Victim ‣ *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [a simultaneous or coincidental death is not a killing].Merger Doctrine Applies if Elements of Crime Have Assaultive Aspect ‣ *People v. Chun (2009*) 45 Cal.4th 1172 [203 P.3d 425, 91 Cal.Rptr.3d 106].

LESSER INCLUDED OFFENSES

- Voluntary Manslaughter ▸ Pen. Code, § 192(a).
- Involuntary Manslaughter ▸ Pen. Code, § 192(b).
- Attempted Murder ▸ Pen. Code, §§ 663, 189.

RELATED ISSUES

Accidental Death of Accomplice During Commission of Arson

In *People v. Ferlin* (1928) 203 Cal. 587, 596–597 [265 P. 230], the Supreme Court held that an aider and abettor is not liable for the accidental death of an accomplice to arson when (1) the defendant was neither present nor actively participating in the arson when it was committed; (2) the accomplice acted alone in actually perpetrating the arson; and (3) the accomplice killed only himself or herself and not another person. More recently, the court stated,

> We conclude that felony-murder liability for any death in the course of arson attaches to all accomplices in the felony at least where, as here, one or more surviving accomplices were present at the scene and active participants in the crime. We need not decide here whether *Ferlin* was correct on its facts.

(*People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542].)

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*; CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*; and 541A, *Felony Murder: Second Degree—Defendant Allegedly Committed Fatal Act*.

SECONDARY SOURCES

1 Witkin & Epstein, Calif*ornia Criminal L*aw (4th ed. 2012) Crimes Against the Person, § 190.

6 Millman, Sevilla & Tarlow, C*alifor*n*ia Criminal* Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.04, 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

542–547.Reserved for Future Use

548. Murder: Alternative Theories

[The defendant has been prosecuted for murder under two theories: (1) malice aforethought, and (2) felony murder.] [[In addition,] (T/t)he defendant has been prosecuted for murder under multiple theories of felony murder.]

Each theory of murder has different requirements, and I will instruct you on ~~both~~each.

You may not find the defendant guilty of murder unless all of you agree that the People have proved that the defendant committed murder under at least one of these theories. You do not all need to agree on the same theory[, but you must unanimously agree whether the murder is in the first or second degree].

New January 2006; Revised August 2014, February 2016, September 2019

BENCH NOTES

Instructional Duty

This instruction is designed to be given when murder is charged on theories of malice and felony murder to help the jury distinguish between the two theories. This instruction is also designed to be given when felony murder is charged on multiple theories. This instruction should be given after the court has given any applicable instructions on defenses to homicide and **before** CALCRIM No. 520, *Murder With Malice Aforethought*.

If there is evidence of multiple acts from which the jury might conclude that the defendant killed the decedent, the court may be required to give CALCRIM No. 3500, *Unanimity*. (See *People v. Dellinger* (1984) 163 Cal.App.3d 284, 300–302 [209 Cal.Rpt. 503] [error not to instruct on unanimity where evidence that the victim was killed either by blunt force or by injection of cocaine].) Review the Bench Notes for CALCRIM No. 3500 discussing when a unanimity instruction is required.

AUTHORITY

- Unanimity on Degrees of Crime and Lesser Included Offenses. ▸ Pen. Code § 1157; *People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1025 [164 Cal.Rptr.3d. 880]; *People v. Aikin* (1971) 19 Cal.App.3d 685, 704 [97 Cal.Rptr. 251],

disapproved on other grounds in *People v. Lines* (1975) 13 Cal.3d 500, 512 [119 Cal.Rptr. 225].

- Alternate Theories May Support Different Degrees of Murder. ▸ *People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1025 [164 Cal.Rptr.3d. 880].

561 Homicide: Provocative Act by Accomplice

[The defendant is charged [in Count __] with _____ *<insert underlying crime>***.] The defendant is [also] charged [in Count __] with murder. A person can be guilty of murder under the provocative act doctrine even if someone else did the actual killing.**

To prove that the defendant is guilty of murder under the provocative act doctrine, the People must prove that:

1. **The defendant was an accomplice of _____** *<insert name[s] or description[s] of alleged provocateur[s]>* **in (committing/ [or] attempting to commit) _____** *<insert underlying crime>*

2. **In (committing/ [or] attempting to commit) _____** *<insert underlying crime>***, _____** *<insert name[s] or description[s] of alleged provocateur[s]>* **intentionally did a provocative act;**

3. **_____** *<insert name[s] or description[s] of alleged provocateur[s]>* **knew that the natural and probable consequences of the provocative act were dangerous to human life and then acted with conscious disregard for life;**

4. **In response to _____'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **provocative act, _____** *<insert name or description of third party>* **killed _____** *<insert name of decedent>***;**

AND

5. **_____'s** *<insert name of decedent>* **death was the natural and probable consequence of _____'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **provocative act.**

A *provocative act* is an act:

1. [That goes beyond what is necessary to accomplish the _____ *<insert underlying crime>***;]**

[AND

2.] Whose natural and probable consequences are dangerous to human life, because there is a high probability that the act will provoke a deadly response.

The defendant is an *accomplice* of _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **if the defendant is subject to prosecution for the identical offense that you conclude** _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **(committed/ [or] attempted to commit). The defendant is subject to prosecution if (he/she) (committed/ [or] attempted to commit) the crime or if:**

1. **(He/She) knew of** _____**'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **criminal purpose to commit** _____ **<***insert underlying crime*>**;**

AND

2. **The defendant intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of** _____ *<insert underlying crime>*/ **[or] participate in a criminal conspiracy to commit** _____ *<insert underlying crime>*).

[An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is at the scene of a crime, even if he or she knows that a crime [will be committed or] is being committed and does nothing to stop it.]

In order to prove that _____**'s** *<insert name of decedent>* **death was the *natural and probable consequence* of** _____**'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **provocative act, the People must prove that:**

1. **A reasonable person in** _____**'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **position would have foreseen that there was a high probability that (his/her/their) act could begin a chain of events resulting in someone's death;**

2. _____**'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **act was a direct and substantial factor in causing** _____**'s** *<insert name of decedent>* **death;**

AND

3. **_____'s** *<insert name or description of decedent>* **death would not have happened if** _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **had not committed the provocative act.**

A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that caused the death.

<Multiple Provocative Acts>
[The People alleged the following provocative acts: _____ *<insert acts alleged>***. You may not find the defendant guilty unless you all agree that the People have proved that:**

1. _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **committed at least one provocative act;**

AND

2. **At least one of the provocative acts committed by** _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **was a direct and substantial factor that caused the killing.**

However, you do not all need to agree on which provocative act has been proved.]

<Accomplice Deceased>
[If you decide that the only provocative act that caused _____'s *<insert name of deceased accomplice>* **death was committed by** _____ *<insert name of deceased accomplice>***, then the defendant is not guilty of _____'s** *<insert name of deceased accomplice>* **murder.]**

<Independent Criminal Act>
[A defendant is not guilty of murder if the killing of _____ *<insert name or description of decedent>* **was caused solely by the independent criminal act of someone other than the defendant or** _____ *<insert name[s] or description[s] of all alleged accomplice[s]>***. An *independent criminal act* is a free, deliberate, and informed criminal act by a person who is not acting with the defendant.]**

<Degree of Murder>
[If you decide that the defendant is guilty of murder, you must decide whether the murder is first or second degree.

To prove that the defendant is guilty of first degree murder, the People must

prove that:

1. **As a result of _____'s** *<insert name[s] or description[s] of alleged provocateur[s]>* **provocative act, _____** *<insert name of decedent>* **was killed while _____** *<insert name[s] or description[s] of alleged provocateur[s]>* **(was/were) committing _____** *<insert Pen. Code, § 189 felony>***;**

AND

2. **_____** *<insert name[s] or description[s] of alleged provocateur[s]>* **specifically intended to commit _____** *<insert Pen. Code, § 189 felony>* **when (he/she/they) did the provocative act.**

In deciding whether _____ *<insert name[s] or description[s] of alleged provocateur[s]>* **intended to commit _____** *<insert Pen. Code, § 189 felony>* **and whether the death occurred during the commission of _____** *<insert Pen. Code, § 189 felony>***, you should refer to the instructions I have given you on _____** *<insert Pen. Code, § 189 felony>*.

Any murder that does not meet these requirements for first degree murder is second degree murder.]

[If you decide that the defendant committed murder, that crime is murder in the second degree.]

New January 2006; Revised August 2014, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction if the provocative act doctrine is one of the general principles of law relevant to the issues raised by the evidence. (*People v. Hood* (1969) 1 Cal.3d 444, 449 [82 Cal.Rptr. 618, 462 P.2d 370].) If the prosecution relies on a first degree murder theory based on a Penal Code section 189 felony, the court has a **sua sponte** duty to give instructions relating to the underlying felony, whether or not it is separately charged.

Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The continued legality of provocative act murder liability when an accomplice committed the provocative act may be affected by this statutory change.

The first bracketed sentence of this instruction should only be given if the underlying felony is separately charged.

In the definition of "provocative act," the court should always give the bracketed phrase that begins, "that goes beyond what is necessary," unless the court determines that this element is not required because the underlying felony includes malice as an element. (*In re Aurelio R.* (1985) 167 Cal.App.3d 52, 59–60 [212 Cal.Rptr. 868].) See discussion in the Related Issues section to CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.

In the paragraph that begins with "An accomplice does not need to be present," use the bracketed phrase "will be committed or" if appropriate under the facts of the case.

If a deceased accomplice participated in provocative acts leading to his or her own death, give the bracketed sentence that begins, "If you decide that the only provocative act that caused . . . ." (See *People v. Garcia* (1999) 69 Cal.App.4th 1324, 1330 [82 Cal.Rptr.2d 254]; *People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 846 [68 Cal.Rptr.2d 388]; *Taylor v. Superior Court* (1970) 3 Cal.3d 578, 583–584 [91 Cal.Rptr. 275, 477 P.2d 131]; *People v. Antick* (1975) 15 Cal.3d 79, 90 [123 Cal.Rptr. 475, 539 P.2d 43], disapproved on other grounds in *People v. McCoy* (20010 25 Cal.4th 1111, 1123 [108 Cal.Rptr.2d 188, 24 P.3d 1210].)

If there is evidence that the actual perpetrator may have committed an *independent criminal act*, give on request the bracketed paragraph that begins, "A defendant is not guilty of murder if . . . ." (See *People v. Cervantes* (2001) 26 Cal.4th 860, 874 [111 Cal.Rptr.2d 148, 29 P.3d 225].)

If the evidence suggests that there is more than one provocative act, give the bracketed section on "Multiple Provocative Acts." (*People v. Briscoe* (2001) 92 Cal.App.4th 568, 591 [112 Cal.Rptr.2d 401].)

If the prosecution is not seeking a first degree murder conviction, omit those bracketed paragraphs relating to first degree murder and simply give the last bracketed sentence of the instruction. As an alternative, the court may omit all instructions relating to the degree and secure a stipulation that if a murder verdict is returned, the degree of murder is set at second degree. If the prosecution is seeking a first degree murder conviction, give the bracketed section on "degree of murder."

AUTHORITY

- Provocative Act Doctrine. ▸ *People v. Gallegos* (1997) 54 Cal.App.4th 453, 461 [63 Cal.Rptr.2d 382].
- Felony-Murder Rule Invoked to Determine Degree. ▸ *People v. Gilbert* (1965) 63 Cal.2d 690, 705 [47 Cal.Rptr. 909, 408 P.2d 365]; *Pizano v. Superior Court* (1978) 21 Cal.3d 128, 139, fn. 4 [145 Cal.Rptr. 524, 577 P.2d 659]; see *People v. Caldwell* (1984) 36 Cal.3d 210, 216–217, fn. 2 [203 Cal.Rptr. 433, 681 P.2d 274].
- Independent Intervening Act by Third Person. ▸ *People v. Cervantes* (2001) 26 Cal.4th 860, 874 [111 Cal.Rptr.2d 148, 29 P.3d 225].
- Natural and Probable Consequences Doctrine. ▸ *People v. Gardner* (1995) 37 Cal.App.4th 473, 479 [43 Cal.Rptr.2d 603].
- Response of Third Party Need Not Be Reasonable. ▸ *People v. Gardner* (1995) 37 Cal.App.4th 473, 482 [43 Cal.Rptr.2d 603].
- Unanimity on Which Act Constitutes Provocative Act Is Not Required. ▸ *People v. Briscoe* (2001) 92 Cal.App.4th 568, 591 [112 Cal.Rptr.2d 401] [multiple provocative acts].
- Implied Malice May Be Imputed to Absent Mastermind. ▸ *People v. Johnson* (2013) 221 Cal.App.4th 623, 633 [164 Cal.Rptr.3d 505].

RELATED ISSUES

See the Related Issues section to CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 147–155.

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

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.04, 140.10, Ch. 142, *Crimes Against the Person,* § 142.01[1][a], [2][c] (Matthew Bender).

590 Gross Vehicular Manslaughter While Intoxicated (Pen. Code, § 191.5(a))

The defendant is charged [in Count __] with gross vehicular manslaughter while intoxicated [in violation of Penal Code section 191.5(a)].

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

1. **The defendant (drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] when under the age of 21/drove while having a blood alcohol level of 0.05 or higher when under the age of 21);**

2. **While driving that vehicle under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug], the defendant also committed (a/an) (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death);**

3. **The defendant committed the (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) with gross negligence;**

AND

4. **The defendant's grossly negligent conduct caused the death of another person.**

[The People allege that the defendant committed the following (misdemeanor[s]/ [and] infraction[s]): _____ *<insert misdemeanor[s] /infraction[s]>***.**

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

[The People [also] allege that the defendant committed the following otherwise lawful act(s) that might cause death: _____ *<insert act[s] alleged>***.]**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant (drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]/drove while having a blood alcohol level of 0.08 or higher/drove under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] when under the age of 21).

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

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

AND

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

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

The combination of driving a vehicle while under the influence of (an alcoholic beverage/ [and/or] a drug) and violating a traffic law is not enough by itself to establish gross negligence. In evaluating whether the defendant acted with gross negligence, consider the level of the defendant's intoxication, if any; the way the defendant drove; and any other relevant aspects of the defendant's conduct.

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

[A person facing a sudden and unexpected emergency situation not caused by that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation,

even if it appears later that a different course of action would have been safer.]

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

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

[The People allege that the defendant committed the following (misdemeanor[s][,]/ [and] infraction[s][,]/ [and] otherwise lawful act[s] that might cause death): _____ *<insert alleged predicate acts when multiple acts alleged>***. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one of these alleged (misdemeanors[,]/ [or] infractions[,]/ [or] otherwise lawful acts that might cause death) and you all agree on which (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) the defendant committed.]**

[The People have the burden of proving beyond a reasonable doubt that the defendant committed gross vehicular manslaughter while intoxicated. If the People have not met this burden, you must find the defendant not guilty of that crime. You must consider whether the defendant is guilty of the lesser crime[s] of _____ *<insert lesser offense[s]>***.]**

New January 2006; Revised June 2007

BENCH NOTES

Instructional Duty

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

The court has a **sua sponte** duty to specify the predicate misdemeanor(s) or infraction(s) alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v.*

Ellis (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].) In element 1, instruct on the particular "under the influence" offense charged. In element 2, instruct on either theory of vehicular manslaughter (misdemeanor/infraction or lawful act committed with negligence) as appropriate. The court **must** also give the appropriate instruction on the elements of the driving under the influence offense and the predicate misdemeanor or infraction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, harmless error if was required].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

If there is sufficient evidence and the defendant requests it, the court should instruct on the imminent peril/sudden emergency doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) Give the bracketed sentence that begins with "A person facing a sudden and unexpected emergency."

If the defendant is charged with one or more prior conviction (see Pen. Code, § 191.5(d)), the court should also give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, unless the defendant has stipulated to the prior conviction or the court has granted a bifurcated trial. (See Bench Notes to CALCRIM No. 3100.)

AUTHORITY

- Gross Vehicular Manslaughter While Intoxicated. ▸ Pen. Code, § 191.5(a).

- Unlawful Act Dangerous Under the Circumstances of Its Commission. ▸ *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].
- Specifying Predicate Unlawful Act. ▸ *People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688].
- Elements of the Predicate Unlawful Act. ▸ *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481[76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587[249 Cal.Rptr. 906].
- Gross Negligence. ▸ *People v. Penny*, (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Gross Negligence—Overall Circumstances. ▸ *People v. Bennett* (1992) 54 Cal.3d 1032, 1039 [2 Cal.Rptr.2d 8, 819 P.2d 849].
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Imminent Peril/Sudden Emergency Doctrine. ▸ *People v. Boulware* (1940) 41 Cal.App.2d 268, 269 [106 P.2d 436].
- This Instruction Upheld. ▸ *People v. Hovda* (2009) 176 Cal.App.4th 1355, 1358 [98 Cal.Rptr.3d 499].

LESSER INCLUDED OFFENSES

- Vehicular Manslaughter With Gross Negligence Without Intoxication. ▸ Pen. Code, § 192(c)(1); *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].
- Vehicular Manslaughter With Ordinary Negligence While Intoxicated. ▸ Pen. Code, § 191.5(b)~~2(c)(3)~~; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1165–1166 [123 Cal.Rptr.2d 322].
- Vehicular Manslaughter With Ordinary Negligence Without Intoxication. ▸ Pen. Code, § 192(c)(2); *People v. Rodgers* (1949) 94 Cal.App.2d 166, 166 [210 P.2d 71].
- Injury to Someone While Driving Under the Influence of Alcohol or

Drugs. ▸ Veh. Code, § 23153; *People v. Miranda* (1994) 21 Cal.App.4th 1464, 1466–1467 [26 Cal.Rptr.2d 610].

Gross vehicular manslaughter while intoxicated is *not* a lesser included offense of murder. (*People v. Sanchez* (2001) 24 Cal.4th 983, 992 [103 Cal.Rptr.2d 698, 16 P.3d 118].)

RELATED ISSUES

DUI Cannot Serve as Predicate Unlawful Act

The Vehicle Code driving-under-the-influence offense of the first element cannot do double duty as the predicate unlawful act for the second element. (*People v. Soledad* (1987) 190 Cal.App.3d 74, 81 [235 Cal.Rptr. 208].) "[T]he trial court erroneously omitted the 'unlawful act' element of vehicular manslaughter when instructing in . . . [the elements] by referring to Vehicle Code section 23152 rather than another 'unlawful act' as required by the statute." (*Id.* at p. 82.)

Predicate Act Need Not Be Inherently Dangerous

"[T]he offense which constitutes the 'unlawful act' need not be an inherently dangerous misdemeanor or infraction. Rather, to be an 'unlawful act' within the meaning of section 192(c)(1), the offense must be dangerous under the circumstances of its commission. An unlawful act committed with gross negligence would necessarily be so." (*People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].)

Lawful Act in an Unlawful Manner: Negligence

The statute uses the phrase "lawful act which might produce death, in an unlawful manner." (Pen. Code, § 191.5.) "[C]ommitting a lawful act in an unlawful manner simply means to commit a lawful act with negligence, that is, without reasonable caution and care." (*People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].) Because the instruction lists the negligence requirement as element 3, the phrase "in an unlawful manner" is omitted from element 2 as repetitive.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 238–245.

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

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[2][c], [4], Ch. 145, *Narcotics and Alcohol Offenses,* §§ 145.02[4][c], 145.03[1][a] (Matthew Bender).

600 Attempted Murder (Pen. Code, §§ 21a, 663, 664)

The defendant is charged [in Count __] with attempted murder.

To prove that the defendant is guilty of attempted murder, the People must prove that:

1. **The defendant took at least one direct but ineffective step toward killing (another person/ [or] a fetus);**

AND

2. **The defendant intended to kill (that/a) (person/ [or] fetus).**

A *direct step* requires more than merely planning or preparing to commit murder or obtaining or arranging for something needed to commit murder. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to kill. It is a direct movement toward the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

[A person who attempts to commit murder is guilty of attempted murder even if, after taking a direct step toward killing, he or she abandons further efforts to complete the crime, or his or her attempt fails or is interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing the murder, then that person is not guilty of attempted murder.]

[A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or "kill zone." In order to convict the defendant of the attempted murder of _____ *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***, the People must prove that the defendant not only intended to kill _____** *<insert name of primary target alleged>* **but also either intended to kill _____** *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill _____** *<insert name or description of victim charged in*

attempted murder count[s] on concurrent-intent theory> **or intended to kill** _____ *<insert name or description of primary target alleged>* **by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of** _____ *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***.]**

[The defendant may be guilty of attempted murder even if you conclude that murder was actually completed.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

New January 2006; Revised December 2008, August 2009, April 2011, August 2013, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the crime of attempted murder when charged, or if not charged, when the evidence raises a question whether all the elements of the charged offense are present. (See *People v. Breverman* (1998) 19 Cal.4th 142, 154 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing duty to instruct on lesser included offenses in homicide generally].)

The second bracketed paragraph is provided for cases in which the prosecution theory is that the defendant created a "kill zone," harboring the specific and concurrent intent to kill others in the zone. (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) "The conclusion that transferred intent does not apply to attempted murder still permits a person who shoots at a group of people to be punished for the actions towards everyone in the group even if that person primarily targeted only one of them." (*Id.* at p. 329.)

The *Bland* court stated that a special instruction on this issue was not required. (*Id.* at p. 331, fn.6.) The bracketed language is provided for the court to use at its discretion.

Give the next-to-last bracketed paragraph when the defendant has been charged only with attempt to commit murder, but the evidence at trial reveals that the murder was actually completed. (See Pen. Code, § 663.)

Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The natural and probable consequences doctrine as the basis for attempted murder may be affected by this statutory change.

Related Instructions
CALCRIM Nos. 3470–3477, Defense Instructions.

CALCRIM No. 601, *Attempted Murder: Deliberation and Premeditation*.

CALCRIM No. 602, *Attempted Murder: Peace Officer, Firefighter, Custodial Officer, or Custody Assistant.*

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

CALCRIM No. 604, *Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

AUTHORITY

- Attempt Defined. ▸ Pen. Code, §§ 21a, 663, 664.
- Murder Defined. ▸ Pen. Code, § 187.
- Specific Intent to Kill Required. ▸ *People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].
- Fetus Defined. ▸ *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Kill Zone Explained. ▸ *People v. Stone* (2009) 46 Cal.4th 131, 137–138 [92 Cal.Rptr.3d 362, 205 P.3d 272].
- Killer Need Not Be Aware of Other Victims in Kill Zone. ▸ *People v. Adams* (2008) 169 Cal.App.4th 1009, 1023 [86 Cal.Rptr.3d 915].
- This Instruction Correctly States the Law. ▸ *People v. Lawrence* (2009) 177 Cal.App.4th 547, 556-557 [99 Cal.Rptr.3d 324].

LESSER INCLUDED OFFENSES

Attempted voluntary manslaughter is a lesser included offense. (*People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].)

RELATED ISSUES

Specific Intent Required

"[T]he crime of attempted murder requires a specific intent to kill . . . ." (*People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].)

> In instructing upon the crime of attempt to commit murder, there should never be any reference whatsoever to implied malice. Nothing less than a specific intent to kill must be found before a defendant can be convicted of attempt to commit murder, and the instructions in this respect should be lean and unequivocal in explaining to the jury that only a specific intent to kill will do.

(People v. Santascoy (1984) 153 Cal.App.3d 909, 918 [200 Cal.Rptr. 709].)

Solicitation

Attempted solicitation of murder is a crime. (*People v. Saephanh* (2000) 80 Cal.App.4th 451, 460 [94 Cal.Rptr.2d 910].)

Single Bullet, Two Victims

A shooter who fires a single bullet at two victims who are both in his line of fire can be found to have acted with express malice toward both victims. (*People v.* Smith) (2005) 37 Cal.4th 733, 744 [37 Cal.Rptr.3d 163, 124 P.3d 730]. See also *People v. Perez* (2010) 50 Cal.4th 222, 225 [112 Cal.Rptr.3d 310, 234 P.3d 557].)

No Attempted Involuntary Manslaughter

"[T]here is no such crime as attempted involuntary manslaughter." (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

Transferred and Concurrent Intent

"[T]he doctrine of transferred intent does not apply to attempted murder." (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) "[T]he defendant may be convicted of the attempted murders of any[one] within the kill zone, although on a concurrent, not transferred, intent theory." (*Id.*)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Elements, §§ 53–67.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.02[3]; Ch. 141, *Conspiracy, Solicitation, and Attempt,* § 141.20; Ch. 142, *Crimes Against the Person,* § 142.01[3][e] (Matthew Bender).

703 Special Circumstances: Intent Requirement for Accomplice After June 5, 1990—Felony Murder (Pen. Code, § 190.2(d))

If you decide that (the/a) defendant is guilty of first degree murder but was not the actual killer, then, when you consider the special circumstance[s] of _____ *<insert felony murder special circumstance[s]>*, **you must also decide whether the defendant acted either with intent to kill or with reckless indifference to human life.**

In order to prove (this/these) special circumstance[s] for a defendant who is not the actual killer but who is guilty of first degree murder as (an aider and abettor/ [or] a member of a conspiracy), the People must prove either that the defendant intended to kill, or the People must prove all of the following:

1. **The defendant's participation in the crime began before or during the killing;**

2. **The defendant was a major participant in the crime;**

   AND

3. **When the defendant participated in the crime, (he/she) acted with reckless indifference to human life.**

[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[The People do not have to prove that the actual killer acted with intent to kill or with reckless indifference to human life in order for the special circumstance[s] of _____ *<insert felony-murder special circumstance[s]>* **to be true.]**

[If you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer, then, in order to find (this/these) special circumstance[s] true, you must find either that the defendant acted with intent to kill or you must find that the defendant acted with reckless indifference to human life and was a *major participant* in the crime.] [When you decide whether the defendant was a *major participant*, consider all the evidence. Among the factors you may consider are:

1. What ~~role did~~ was the defendant's role ~~play~~ in planning the crime ~~inal enterprise~~ that led to the death[s]?
2. What was the defendant's role ~~did the defendant play~~ in supplying or using lethal weapons?
3. What ~~awareness~~ did the defendant know about ~~have of particular~~ dangers posed by the ~~nature of the~~ crime, any weapons used, or past experience or conduct of the other participant[s]?
4. Was the defendant ~~present at the scene of the killing,~~ in a position to facilitate or to prevent the death ~~actual murder~~?
5. Did the defendant's ~~own~~ action~~s~~ or inaction~~s~~ play a ~~particular~~ role in the death?
6. What did the defendant do after lethal force was used?

[7._____<*insert any other relevant factors.*>]

No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.]

If the defendant was not the actual killer, then the People have the burden of proving beyond a reasonable doubt that (he/she) acted with either the intent to kill or with reckless indifference to human life and was a major participant in the crime for the special circumstance[s] of _____ <*insert felony murder special circumstance[s]*> **to be true. If the People have not met this burden, you must find (this/these) special circumstance[s] (has/have) not been proved true [for that defendant].**

New January 2006; Revised April 2008, February 2016, August 2016, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the mental state required for accomplice liability when a special circumstance is charged and there is sufficient evidence to support the finding that the defendant was not the actual killer. (See *People v. Jones* (2003) 30 Cal.4th 1084, 1117 [135 Cal.Rptr.2d 370, 70 P.3d 359].) If there is sufficient evidence to show that the defendant may have been an accomplice and not the actual killer, the court has a **sua sponte** duty to give the accomplice intent instruction, regardless of the prosecution's theory of the case. *(Ibid.)*

Do not give this instruction when giving CALCRIM No. 731, Special Circumstances: Murder in Commission of Felony—Kidnapping With Intent to Kill After March 8, 2000 or CALCRIM No. 732, Special Circumstances: Murder

in Commission of Felony—Arson With Intent to Kill. (People v. Odom (2016) 244 Cal.App.4th 237, 256–257 [197 Cal.Rptr.3d 774].)

When multiple special circumstances are charged, one or more of which require intent to kill, the court may need to modify this instruction.

Proposition 115 modified the intent requirement of the special circumstance law, codifying the decisions of *People v. Anderson* (1987) 43 Cal.3d 1104, 1147 [240 Cal.Rptr. 585, 742 P.2d 1306], and *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127]. The current law provides that the actual killer does not have to act with intent to kill unless the special circumstance specifically requires intent. (Pen. Code, § 190.2(b).) If the felony-murder special circumstance is charged, then the People must prove that a defendant who was not the actual killer was a major participant and acted with intent to kill or with reckless indifference to human life. (Pen. Code, § 190.2(d)**;** *People v. Banks* (2015) 61 Cal.4th 788, 807-809 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada* (1995) 11 Cal.4th 568, 571 [46 Cal.Rptr.2d 586, 904 P.2d 1197].)

Use this instruction for any case in which the jury could conclude that the defendant was an accomplice to a killing that occurred after June 5, 1990, when the felony-murder special circumstance is charged.

Give the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer if there is a codefendant alleged to be the actual killer or if the jury could convict the defendant as either the actual killer or an accomplice.

If the jury could convict the defendant either as a principal or as an accomplice, the jury must find intent to kill or reckless indifference if they cannot agree that the defendant was the actual killer. (*People v. Jones* (2003) 30 Cal.4th 1084, 1117 [135 Cal.Rptr.2d 370, 70 P.3d 359].) In such cases, the court should give both the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer, and the bracketed paragraph that begins with "[I]f you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer . . . ."

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id*. at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of ~~about~~ whether the defendant was a major participant, but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

Do not give this instruction if accomplice liability is not at issue in the case.

AUTHORITY

- Accomplice Intent Requirement, Felony Murder. ▸ Pen. Code, § 190.2(d).
- Reckless Indifference to Human Life. ▸ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Constitutional Standard for Intent by Accomplice. ▸ *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▸ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 536, 543.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, Death Penalty, § 87.14[2][b][ii] (Matthew Bender).

732 Special Circumstances: Murder in Commission of Felony—Arson With Intent to Kill (Pen. Code, § 190.2(a)(17))

The defendant is charged with the special circumstance of intentional murder while engaged in the commission of arson that burned an (inhabited structure /[or] inhabited property) [in violation of Penal Code section 190.2(a)(17)].

To prove that this special circumstance is true, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) arson that burned an (inhabited structure/[or] inhabited property);**

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) arson that burned an (inhabited structure/[or] inhabited property);**

<Give element 3 if defendant did not personally commit or attempt arson.>

[3. If the defendant did not personally commit [or attempt to commit] arson, then another perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), personally committed [or attempted to commit] arson that burned an (inhabited structure/[or] inhabited property);]

(3/4). The commission [or attempted commission] of the arson was a substantial factor in causing the death of another person;

AND

(4/5). The defendant intended that the other person be killed.

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] arson that burned an (inhabited structure /[or] inhabited property), please refer to the separate instructions that I (will give/have given) you on that crime. [To decide whether the defendant aided and abetted the crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit the crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You

must apply those instructions when you decide whether the People have proved this special circumstance.

<Make certain that all appropriate instructions on underlying arson, aiding and abetting, and conspiracy are given.>

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

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

[If all the listed elements are proved, you may find this special circumstance true even if the defendant intended solely to commit murder and the commission of arson was merely part of or incidental to the commission of that murder.]

New January 2006; Revised August 2013, August 2016, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the special circumstance. (See *People v. Williams* (1997) 16 Cal.4th 635, 689 [66 Cal.Rptr.2d 573, 941 P.2d 752].) The court also has a **sua sponte** duty to instruct on the elements of the arson alleged. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

Do not give CALCRIM No. 703, *Special Circumstances: Intent requirement for Accomplice After June 5, 1990*, together with this instruction. See *People v. Odom* (2016) 244 Cal.App.4th 237, 256–257 [197 Cal.Rptr.3d 774].

Subparagraph (M) of Penal Code section 190.2(a)(17) eliminates the application of *People v. Green* (1980) 27 Cal.3d 1, 61 [164 Cal.Rptr. 1, 609 P.2d 468], to intentional murders during the commission of kidnapping or arson of an inhabited structure. The statute may only be applied to alleged homicides after the effective date, March 8, 2000. This instruction may be given alone or with CALCRIM No.

730, *Special Circumstances: Murder in Commission of Felony, Pen. Code, § 190.2(a)(17).*

For the standard felony-murder special circumstance, it is not necessary for the actual killer to intend to kill. (Pen. Code, § 190.2(b).) However, an accomplice who is not the actual killer must either act with intent to kill or be a major participant and act with reckless indifference to human life. (Pen. Code, § 190.2(d).) Subparagraph (M) of Penal Code section 190.2(a)(17) does not specify whether the defendant must personally intend to kill or whether accomplice liability may be based on an actual killer who intended to kill even if the defendant did not. (See Pen. Code, § 190.2(a)(17)(M).) This instruction has been drafted to require that the defendant intend to kill, whether the defendant is an accomplice or the actual killer. If the evidence raises the potential for accomplice liability and the court concludes that the accomplice need not personally intend to kill, then the court must modify element 5 to state that the person who caused the death intended to kill. In such cases, the court also has a **sua sponte** duty give CALCRIM No. 703, *Special Circumstances: Intent Requirement for Accomplice After June 5, 1990—Felony Murder, Pen. Code, § 190.2(a)(17)*.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401]; *People v. Cervantes* (2001) 26 Cal.4th 860, 865–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Because causation is likely to be an issue in any case where this instruction is given, the committee has included the paragraph that begins with "An act causes death if." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with "There may be more than one cause of death." (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

If the prosecution's theory is that the defendant committed or attempted to commit arson, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select "the defendant" in the first sentence. Give all appropriate instructions on arson.

If the prosecution's theory is that the defendant aided and abetted or conspired to commit arson, select one or both of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on arson and on aiding and abetting and/or conspiracy with this instruction.

When giving this instruction with CALCRIM No. 730, give the final bracketed paragraph.

Related Instructions
CALCRIM No. 1502, *Arson: Inhabited Structure or Property*.

AUTHORITY

- Special Circumstance. Pen. Code, § 190.2(a)(17)~~(B),~~ (H) & (M).

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 532-533.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* §§ 87.13[17], 87.14 (Matthew Bender).

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

810. Torture (Pen. Code, § 206)

The defendant is charged [in Count ____] with torture [in violation of Penal Code section 206].

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

1. **The defendant inflicted great bodily injury on someone else;**

AND

2. **When inflicting the injury, the defendant intended to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose.**

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

[It is not required that a victim actually suffer pain.]

[Someone acts for the purpose of *extortion* if he or she intends to (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]

[Someone acts for the purpose of *extortion* if he or she (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act. An *official act* is an act that an officer does in his or her official capacity using the authority of his or her public office.]

[Someone acts with a *sadistic purpose* if he or she intends to inflict pain on someone else in order to experience pleasure himself or herself.]

New January 2006

BENCH NOTES

Instructional Duty

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

Unlike murder by torture, the crime of torture does not require that the intent to cause pain be premeditated or that any cruel or extreme pain be prolonged. (*People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1205 [68 Cal.Rptr.2d 619]; *People v. Vital* (1996) 45 Cal.App.4th 441, 444 [52 Cal.Rptr.2d 676].) Torture as defined in section 206 of the Penal Code focuses on the mental state of the perpetrator and not the actual pain inflicted. (*People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904].) Give the first bracketed paragraph on request if there is no proof that the alleged victim actually suffered pain. (See Pen. Code, § 206.)

"Extortion" need not be defined for purposes of torture. (*People v. Barrera* (1993) 14 Cal.App.4th 1555, 1564 [18 Cal.Rptr.2d 395]; but see *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628] [term should be defined for kidnapping under Pen. Code, § 209].) Nevertheless, either of the bracketed definitions of extortion, and the related definition of "official act," may be given on request if any of these issues are raised in the case. (See Pen. Code, § 518 [defining "extortion"]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining "official act"].) Extortion may also be committed by using "the color of official right" to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition of the term].) It appears that this type of extortion would rarely occur in the context of torture, so it is excluded from this instruction.

"Sadistic purpose" may be defined on request. (See *People v. Barrera, supra,* 14 Cal.App.4th at p. 1564; *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712] [approving use of phrase in torture-murder and special circumstances torture-murder instructions].)

Related Instructions
First degree murder by torture defines torture differently for the purposes of murder. See CALCRIM No. 521, *Murder: Degrees*.

AUTHORITY

- Elements ▸ Pen. Code, § 206.
- Extortion Defined ▸ Pen. Code, § 518.
- Great Bodily Injury Defined ▸ Pen. Code, § 12022.7(f); see, e.g., *People v. Hale* (1999) 75 Cal.App.4th 94, 108 [88 Cal.Rptr.2d 904] [broken and smashed teeth, split lip, and facial cut sufficient evidence of great bodily injury].

- Cruel Pain Equivalent to Extreme or Severe Pain ▸ *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202 [68 Cal.Rptr.2d 619].
- Intent ▸ *People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Hale* (1999) 75 Cal.App.4th 94, 106–107 [88 Cal.Rptr.2d 904]; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042–1043 [84 Cal.Rptr.2d 5]; see *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204–1206 [68 Cal.Rptr.2d 619] [neither premeditation nor intent to inflict prolonged pain are elements of torture].
- Sadistic Purpose Defined ▸ *People v. Raley* (1992) 2 Cal.4th 870, 899–901 [8 Cal.Rptr.2d 678, 830 P.2d 712]; *People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1202–1204 [68 Cal.Rptr.2d 619]; see *People v. Healy* (1993) 14 Cal.App.4th 1137, 1142 [18 Cal.Rptr.2d 274] [sexual element not required].

LESSER INCLUDED OFFENSES

In *People v. Martinez* (2005) 125 Cal.App.4th 1035, 1042–1046 [23 Cal.Rptr.3d 508], the court held that none of the following offenses were lesser included offenses to torture: assault with a deadly weapon (Pen. Code, § 245(a)(1)); corporal injury on a cohabitant (Pen. Code, § 273.5); forcible rape (Pen. Code, § 261(a)(2)); forcible oral copulation (Pen. Code, § 287~~8a~~(c)); criminal threats (Pen. Code, § 422); dissuading a witness by force or threats (Pen. Code, § 136.1(c)(1)); false imprisonment by violence. (Pen. Code, § 236.)

The court did not decide whether assault with force likely to cause great bodily injury is a lesser included offense to torture. (*Id.* at p. 1043–1044.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 88–90.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.15 (Matthew Bender).

811–819. Reserved for Future Use

860. Assault on Firefighter or Peace Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245(c) & (d))

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) on a (firefighter/peace officer) [in violation of Penal Code section 245].

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

<Alternative 1A—force with weapon>

[1. The defendant did an act with (a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person;

5. When the defendant acted, the person assaulted was lawfully performing (his/her) duties as a (firefighter/peace officer);

[AND]

6. **When the defendant acted, (he/she) knew, or reasonably should have known, that the person assaulted was a (firefighter/peace officer) who was performing (his/her) duties(;/.)**

<Give element 7 when instructing on self-defense or defense of another.>
[AND

7. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

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

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it is designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *semiautomatic firearm* extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.]

[A *machine gun* is any weapon that (shoots/is designed to shoot/ [or] can readily be restored to shoot) automatically more than one shot by a single function of the trigger and without manual reloading.]

[An *assault weapon* includes _____ *<insert names of appropriate designated assault weapons listed in Pen. Code, § 30510 and further defined by Pen. Code § 30515>***.]**

[A *.50 BMG rifle* is a center fire rifle that can fire a .50 BMG cartridge [and that is not an assault weapon or a machine gun]. A *.50 BMG cartridge* is a cartridge that is designed and intended to be fired from a center fire rifle and that has all three of the following characteristics:

1. **The overall length is 5.54 inches from the base of the cartridge to the tip of the bullet;**

2. **The bullet diameter for the cartridge is from .510 to, and including, .511 inch;**

AND

3. **The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.]**

[The term[s] (*great bodily injury[,]/ deadly weapon[,]/ firearm[,]/ machine gun[,]/assault weapon[,]/* [and] *.50 BMG rifle)* (is/are) defined in another instruction to which you should refer.]

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

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

[The duties of a _____ *<insert title of officer>* **include** _____ *<insert job duties>***.]**

[A *firefighter* includes anyone who is an officer, employee, or member of a (governmentally operated (fire department/fire protection or firefighting agency) in this state/federal fire department/federal fire protection or firefighting agency), whether or not he or she is paid for his or her services.]

New January 2006; Revised April 2011, February 2012, February 2013, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In addition, the court has a **sua sponte** duty to instruct on defendant's reliance on self-defense as it relates to the use of excessive force. (*People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].) If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of the arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651].) If lawful performance is an issue, give the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*. In addition, give CALCRIM No. 2672, *Lawful Performance: Resisting Unlawful Arrest With Force*, if requested.

Give element 1A if it is alleged the assault was committed with a deadly weapon, a firearm, a semiautomatic firearm, a machine gun, an assault weapon, or .50 BMG rifle. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245(c) & (d).)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

The court may give the bracketed sentence that begins, "The duties of a _____ <*insert title . . . .*> include," on request. The court may insert a description of the officer's duties such as "the correct service of a facially valid search warrant." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr. 729, 800 P.2d 1159].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245(c) & (d)(1)–(3).
- Assault Weapon Defined ▸ Pen. Code, §§ 30510, 30515.
- Firearm Defined ▸ Pen. Code, § 16520.
- Machine Gun Defined ▸ Pen. Code, § 16880.
- Semiautomatic Pistol Defined ▸ Pen. Code, § 17140.
- .50 BMG Rifle Defined ▸ Pen. Code, § 30530.
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Firefighter Defined ▸ Pen. Code, § 245.1.
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▸ Pen. Code, § 240.
- Assault With a Deadly Weapon ▸ Pen. Code, § 245.
- Assault on a Peace Officer ▸ Pen. Code, § 241(b).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 65.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

862. Assault on Custodial Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245, 245.3)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) on a custodial officer [in violation of Penal Code section 245.3].

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

<Alternative 1A—force with weapon>

[1. The defendant willfully did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

5. When the defendant acted, the person assaulted was lawfully performing (his/her) duties as a custodial officer;

[AND]

6. When the defendant acted, (he/she) knew, or reasonably should have known, both that the person assaulted was a custodial officer and that (he/she) was performing (his/her) duties as a custodial officer(;/.)

<Give element 7 when instructing on self-defense or defense of another.>
[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

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

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[The term[s] (*great bodily injury/ [and] deadly weapon)* (is/are) defined in another instruction to which you should refer.]

A *custodial officer* is someone who works for a law enforcement agency of a city or county, is responsible for maintaining custody of prisoners, and helps operate a local detention facility. [A (county jail/city jail/_____ <*insert other detention facility*>) is a local detention facility.] [A custodial officer is not a peace officer.]

New January 2006; Revised April 2011, February 2013, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In addition, the court has a **sua sponte** duty to instruct on defendant's reliance on self-defense as it relates to the use of excessive force. (*People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].) If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) If lawful performance is an issue, give the appropriate portions of CALCRIM No. 2671, *Lawful Performance: Custodial Officer*.

Give element 1A if it is alleged the assault was committed with a deadly weapon. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245.3.)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the bracketed definition of "local detention facility," do not insert the name of a specific detention facility. Instead, insert a description of the type of detention facility at issue in the case. (See *People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869] [jury must determine if alleged victim is a peace officer]; see Penal Code section 6031.4 [defining local detention facility].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245, 245.3.
- Custodial Officer Defined ▸ Pen. Code, § 831.
- Local Detention Facility Defined ▸ Pen. Code, § 6031.4.
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].

- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 67.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

863. Assault on Transportation Personnel or Passenger With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245, 245.2)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) on (a/an) (operator/driver/station agent/ticket agent/passenger) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>* **[in violation of Penal Code section 245.2].**

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

<Alternative 1A—force with weapon>

[1. The defendant willfully did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

<Alternative 5A—transportation personnel>

[5. When the defendant acted, the person assaulted was performing (his/her) duties as (a/an) (operator/driver/station agent/ticket agent) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>***;]**

<Alternative 5B—passenger>

[5. The person assaulted was a passenger of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>***;]**

[AND]

6. When the defendant acted, (he/she) knew, or reasonably should have known, [both] that the person assaulted was (a/an) (operator/driver/station agent/ticket agent/passenger) of (a/an) _____ *<insert name of vehicle or transportation entity specified in Pen. Code, § 245.2>* **[and that (he/she) was performing (his/her) duties](;/.)**

<Give element 7 when instructing on self-defense or defense of another.>

[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

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

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[The term[s] (*great bodily injury*/ [and] *deadly weapon*) (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised February 2013, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give element 1A if it is alleged the assault was committed with a deadly weapon. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245.2.)

If the victim was an operator, driver, station agent, or ticket agent of an identified vehicle or transportation entity, give element 5A and the bracketed language in element 6. If the victim was a passenger, give element 5B and omit the bracketed language in element 6.

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245, 245.2.
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▸ Pen. Code, § 240.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 72.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11[3]; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

864–874. Reserved for Future Use

875. Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240, 245(a)(1)–(4), (b))

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon other than a firearm/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) [in violation of Penal Code section 245].

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

<Alternative 1A—force with weapon>

[1. The defendant did an act with (a deadly weapon other than a firearm/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1B. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

[AND]

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon other than a firearm/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person(;/.)

<Give element 5 when instructing on self-defense or defense of another.>

[AND

5. The defendant did not act (in self-defense/ [or] in defense of someone else).]

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

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

[A *deadly weapon other than a firearm* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *semiautomatic pistol* extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.]

[A *machine gun* is any weapon that (shoots/is designed to shoot/ [or] can readily be restored to shoot) automatically more than one shot by a single function of the trigger and without manual reloading.]

[An *assault weapon* includes _____ *<insert names of appropriate designated assault weapons listed in Pen. Code, § 30510 or as defined by Pen. Code, § 30515>***.]**

[A *.50 BMG rifle* is a center fire rifle that can fire a .50 BMG cartridge [and that is not an assault weapon or a machine gun]. A *.50 BMG cartridge* is a cartridge that is designed and intended to be fired from a center fire rifle and that has all three of the following characteristics:

1. **The overall length is 5.54 inches from the base of the cartridge to the tip of the bullet;**

2. **The bullet diameter for the cartridge is from .510 to, and including, .511 inch;**

AND

3. **The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.]**

[The term[s] (*great bodily injury[,]/ deadly weapon other than a firearm[,]/ firearm[,]/ machine gun[,]/assault weapon[,]/* [and] *.50 BMG rifle)* (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised June 2007, August 2009, October 2010, February 2012, February 2013, August 2013, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 4 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give element 1A if it is alleged the assault was committed with a deadly weapon other than a firearm, firearm, semiautomatic firearm, machine gun, an assault weapon, or .50 BMG rifle. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245(a).)

Give the bracketed definition of "application or force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a deadly weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519 [108 Cal.Rptr. 89, 510 P.2d 33].)

If the charging document names more than one victim, modification of this instruction may be necessary to clarify that each victim must have been subject to the application of force. (*People v. Velasquez* (2012) 211 Cal.App.4th 1170, 1176–1177 [150 Cal.Rptr.3d 612].)

AUTHORITY

- Elements ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).
- To Have Present Ability to Inflict Injury, Gun Must Be Loaded Unless Used as Club or Bludgeon ▸ *People v. Rodriguez* (1999) 20 Cal.4th 1, 11, fn. 3 [82 Cal.Rptr.2d 413, 971 P.2d 618].
- This Instruction Affirmed ▸ *People v. Golde* (2008) 163 Cal.App.4th 101, 122-123 [77 Cal.Rptr.3d 120].
- Assault Weapon Defined ▸ Pen. Code, §§ 30510, 30515.
- Semiautomatic Pistol Defined ▸ Pen. Code, § 17140.
- Firearm Defined ▸ Pen. Code, § 16520.
- Machine Gun Defined ▸ Pen. Code, § 16880.
- .50 BMG Rifle Defined ▸ Pen. Code, § 30530.
- Willful Defined ▸ Pen. Code, § 7, subd. 1; *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▸ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▸ Pen. Code, § 240.

Assault with a firearm is a lesser included offense of assault with a semiautomatic firearm. (*People v. Martinez* (2012) 208 Cal.App.4th 197, 199 [145 Cal.Rptr.3d 141].)

A misdemeanor brandishing of a weapon or firearm under Penal Code section 417 is not a lesser and necessarily included offense of assault with a deadly weapon.

(*People v. Escarcega* (1974) 43 Cal.App.3d 391, 398 [117 Cal.Rptr. 595]; *People v. Steele* (2000) 83 Cal.App.4th 212, 218, 221 [99 Cal.Rptr.2d 458].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 41.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11[3] (Matthew Bender).

890. Assault With Intent to Commit Specified Crimes [While Committing First Degree Burglary] (Pen. Code, § 220(a), (b))

The defendant is charged [in Count __] with assault with intent to commit _____ *<insert crime specified in Penal Code section 220(a)>* **[while committing first degree burglary] [in violation of Penal Code section 220((a)/ [and] (b))].**

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

1. **The defendant did an act that by its nature would directly and probably result in the application of force to a person;**

2. **The defendant did that act willfully;**

3. **When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;**

4. **When the defendant acted, (he/she) had the present ability to apply force to a person;**

[AND]

5. **When the defendant acted, (he/she) intended to commit _____***<insert crime specified in Pen. Code, ' 220(a)>***;**

[AND

6. When the defendant acted, (he/she) was committing a first degree burglary.]

<If the court concludes that the first degree burglary requirement in Pen. Code, § 220(b) is a penalty allegation and not an element of the offense, give the bracketed language below in place of element 6.>

[If you find the defendant guilty of the charged crime, you must then decide whether the People have proved the additional allegation that the crime was committed in the commission of a first degree burglary.]

[First degree burglary is defined in another instruction to which you should refer.]

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

The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

No one needs to actually have been injured by the defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

To decide whether the defendant intended to commit _____ *<insert crime specified in Pen. Code, § 220(a)>* **please refer to Instruction[s] _____which define[s] (that/those) crime[s].**

New January 2006; Revised April 2010, October 2010, August 2012

BENCH NOTES

Instructional Duty

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

The court has a **sua sponte** duty to give a *Mayberry* consent instruction if the defense is supported by substantial evidence and is consistent with the defense

raised at trial. (*People v. May* (1989) 213 Cal.App.3d 118, 124–125 [261 Cal.Rptr. 502]; see *People v. Mayberry* (1975) 15 Cal.3d 143 [125 Cal.Rptr. 745, 542 P.2d 1337]; see also CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats* [alternative paragraph on reasonable and actual belief in consent].)

The court has a **sua sponte** duty to instruct on the sex offense or offense alleged. (*People v. May* (1989) 213 Cal.App.3d 118, 129 [261 Cal.Rptr. 502].) In the blanks, specify the sex offense or offenses that the defendant is charged with intending to commit. Included sex offenses are: rape (Pen. Code, § 261); oral copulation (Pen. Code, § 287~~8a~~ [including in-concert offense]); sodomy (Pen. Code, § 286 [including in-concert offense]); sexual penetration (Pen. Code, § 289); rape, spousal rape, or sexual penetration in concert (Pen. Code, § 264.1); and lewd or lascivious acts (Pen. Code, § 288). (See Pen. Code, § 220.) Give the appropriate instructions on the offense or offenses alleged.

The court should also give CALCRIM Nos. 1700 and 1701 on burglary, if defendant is charged with committing the offense during a first degree burglary, as well as the appropriate CALCRIM instruction on the target crime charged pursuant to Penal Code section 220.

If the specified crime is mayhem, give CALCRIM No. 891, *Assault With Intent to Commit Mayhem*.

Element 6 is in brackets because there is no guidance from courts of review regarding whether the first degree burglary requirement in Penal Code section 220(b) is an element or an enhancement.

Related Instructions
CALCRIM No. 915, *Simple Assault*.

AUTHORITY

- Elements ▸ Pen. Code, § 220.
- Elements for Assault ▸ Pen. Code, § 240; *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Court Must Instruct on Elements of Intended Crime ▸ *People v. May* (1989) 213 Cal.App.3d 118, 129 [261 Cal.Rptr. 502] [in context of assault to commit rape].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 28–34.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.11 (Matthew Bender).

LESSER INCLUDED OFFENSES

- Simple Assault ▸ Pen. Code, § 240; see *People v. Greene* (1973) 34 Cal.App.3d 622, 653 [110 Cal.Rptr. 160] [in context of charged assault with intent to commit rape].

Both assault with intent to commit rape and first degree burglary are lesser included offenses of assault with intent to commit rape during first degree burglary (Pen. Code, § 220(b); (*People v. Dyser* (2012) 202 Cal.App.4th 1015, 1021 [135 Cal.Rptr.3d 891].)

There is no crime of attempted assault to commit an offense. (See *People v. Duens* (1976) 64 Cal.App.3d 310, 314 [134 Cal.Rptr. 341] [in context of assault to commit rape].)

RELATED ISSUES

Abandonment

An assault with intent to commit another crime is complete at any point during the incident when the defendant entertains the intent to commit the crime. "It makes no difference whatsoever that he later abandons that intent." (See *People v. Trotter* (1984) 160 Cal.App.3d 1217, 1223 [207 Cal.Rptr. 165]; *People v. Meichtry* (1951) 37 Cal.2d 385, 388–389 [231 P.2d 847] [both in context of assault to commit rape].)

SECONDARY SOURCES

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.60 (Matthew Bender).

970. Shooting Firearm or BB Device in Grossly Negligent Manner (Pen. Code, § 246.3)

The defendant is charged [in Count __] with shooting a (firearm/BB Device) in a grossly negligent manner [in violation of Penal Code section 246.3].

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

1. **The defendant intentionally shot a (firearm/BB device);**

2. **The defendant did the shooting with gross negligence;**

[AND]

3. **The shooting could have resulted in the injury or death of a person(;/.)**

<Give element 4 when instructing on self-defense or defense of another.>
[AND

4. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

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

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

AND

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

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

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

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *BB device* is any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.]

[The term[s] (*great bodily injury/* [and] *firearm)* (is/are) defined in another instruction to which you should refer.]

New January 2006; Revised June 2007, February 2012, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 4 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

AUTHORITY

- Elements ▸ Pen. Code, § 246.3.
- Discharge Must be Intentional ▸ *People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872]; *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438 [35 Cal.Rptr.2d 155]; *People v. Alonzo* (1993) 13 Cal.App.4th 535, 538 [16 Cal.Rptr.2d 656].
- Firearm Defined ▸ Pen. Code, § 16520.
- BB Device Defined ▸ Pen. Code, § 246.3(c).
- Willful Defined ▸ Pen. Code, § 7(1).

- Gross Negligence Defined ▸ *People v. Alonzo* (1993) 13 Cal.App.4th 535, 540 [16 Cal.Rptr.2d 656]; see *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926].
- Actual Belief Weapon Not Loaded Negates Mental State ▸ *People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872]; *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438–1439, 1440 [35 Cal.Rptr.2d 155].

LESSER INCLUDED OFFENSES

Unlawful possession by a minor of a firearm capable of being concealed on the person (see Pen. Code, § 29610) is not a necessarily included offense of unlawfully discharging a firearm with gross negligence. (*In re Giovani M.* (2000) 81 Cal.App.4th 1061, 1066 [97 Cal.Rptr.2d 319].)

RELATED ISSUES

~~***Second Degree Felony-Murder***~~
~~Grossly negligent discharge of a firearm is an inherently dangerous felony and may serve as the predicate offense to second degree felony-murder. (*People v. Robertson* (2004) 34 Cal.4th 156, 173 [17 Cal.Rptr.3d 604, 95 P.3d 872] [merger doctrine does not apply]; *People v. Clem* (2000) 78 Cal.App.4th 346, 351 [92 Cal.Rptr.2d 727]; see CALCRIM Nos. 541A–541C, *Felony Murder: Second Degree.*)~~

Actual Belief Weapon Not Loaded Negates Mental State
"A defendant who believed that the firearm he or she discharged was unloaded . . . would not be guilty of a violation of section 246.3." (*People v. Robertson* (2004) 34 Cal.4th 156, 167 [17 Cal.Rptr.3d 604, 95 P.3d 872] [citing *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438–1439, 1440 [35 Cal.Rptr.2d 155]].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 48.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][i] (Matthew Bender).

971–979. Reserved for Future Use

982. Brandishing Firearm or Deadly Weapon to Resist Arrest (Pen. Code, § 417.8)

The defendant is charged [in Count __] with brandishing a (firearm/deadly weapon) to resist arrest or detention [in violation of Penal Code section 417.8].

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

1. **The defendant drew or exhibited a (firearm/deadly weapon);**

   AND

2. **When the defendant drew or exhibited the (firearm/deadly weapon), (he/she) intended to resist arrest or to prevent a peace officer from arresting or detaining (him/her/someone else).**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

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

[The term[s] (*firearm*[,]/ *deadly weapon*[,]/ [and] *great bodily injury*) (is/are) defined in another instruction to which you should refer.]

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

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

New January 2006; Revised February 2012, February 2013, September 2019

BENCH NOTES

Instructional Duty

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

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed paragraph about the lack of any requirement that the firearm be loaded on request.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

Related Instructions
CALCRIM No. 983, *Brandishing Firearm or Deadly Weapon: Misdemeanor*.
CALCRIM No. 981, *Brandishing Firearm in Presence of Peace Officer*.
CALCRIM No. 2653, *Taking Firearm or Weapon While Resisting Peace Officer or Public Officer*.

AUTHORITY

- Elements ▸ Pen. Code, § 417.8.
- Firearm Defined ▸ Pen. Code, § 16520; see *In re Jose A.* (1992) 5 Cal.App.4th 697, 702 [7 Cal.Rptr.2d 44] [pellet gun not a "firearm" within meaning of Pen. Code, § 417(a)].
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204] [hands and feet not deadly weapons]; see, e.g., *People v. Simons* (1996) 42 Cal.App.4th 1100, 1107 [50 Cal.Rptr.2d 351] [screwdriver was capable of being used as a deadly weapon and defendant intended to use it as one if need be]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 469–470 [90 Cal.Rptr.2d 450] [pit bulls were deadly weapons under the circumstances].
- Lawful Performance of Duties Not an Element ▸ *People v. Simons* (1996) 42 Cal.App.4th 1100, 1109–1110 [50 Cal.Rptr.2d 351].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

Resisting arrest by a peace officer engaged in the performance of his or her duties in violation of Penal Code section 148(a) is not a lesser included offense of Penal Code section 417.8. (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108–1110 [50 Cal.Rptr.2d 351].) Brandishing a deadly weapon in a rude, angry, or threatening manner in violation of Penal Code section 417(a)(1) is also not a lesser included offense of section 417.8. (*People v. Pruett* (1997) 57 Cal.App.4th 77, 88 [66 Cal.Rptr.2d 750].)

RELATED ISSUES

See the Related Issues section to CALCRIM No. 981, *Brandishing Firearm in Presence of Peace Officer*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 6, 7.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][e] (Matthew Bender).

983. Brandishing Firearm or Deadly Weapon: Misdemeanor (Pen. Code, § 417(a)(1) & (2))

The defendant is charged [in Count __] with brandishing a (firearm/deadly weapon) [in violation of Penal Code section 417(a)].

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

1. **The defendant drew or exhibited a (firearm/deadly weapon) in the presence of someone else;**

[AND]

<Alternative 2A—displayed in rude, angry, or threatening manner>
[2. The defendant did so in a rude, angry, or threatening manner(;/.)]

<Alternative 2B—used in fight>
[2. The defendant [unlawfully] used the (firearm/deadly weapon) in a fight or quarrel(;/.)]

<Give element 3 when instructing on self-defense or defense of another.>
[AND

3. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

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

[The term[s] (*firearm[,]/ deadly weapon[,]/* [and] *great bodily injury*) (is/are) defined in another instruction to which you should refer.]

[It is not required that the firearm be loaded.]

New January 2006; Revised October 2010, February 2012, February 2013, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 3 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

If the prosecution alleges that the defendant displayed the weapon in a rude, angry, or threatening manner, give alternative 2A. If the prosecution alleges that the defendant used the weapon in a fight, give alternative 2B.

If the defendant is charged under Penal Code section 417(a)(2)(A), the court **must** also give CALCRIM No. 984, *Brandishing Firearm: Misdemeanor—Public Place*.

Give the bracketed definition of "firearm" or "deadly weapon" unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

On request, give the bracketed sentence stating that the firearm need not be loaded.

AUTHORITY

- Elements ▸ Pen. Code, § 417(a)(1) & (2).
- Firearm Defined ▸ Pen. Code, § 16520.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Victim's Awareness of Firearm Not a Required Element ▸ *People v. McKinzie* (1986) 179 Cal.App.3d 789, 794 [224 Cal.Rptr. 891].
- Weapon Need Not Be Pointed Directly at Victim ▸ *People v. Sanders* (1995) 11 Cal.4th 475, 542 [46 Cal.Rptr.2d 751, 905 P.2d 420].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 5.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01[1][e] (Matthew Bender).

1015 Oral Copulation by Force, Fear, or Threats (Pen. Code, § 287~~8a~~(c)(2) & (3), (k))

The defendant is charged [in Count __] with oral copulation by force [in violation of Penal Code section 287~~8a~~].

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

1. **The defendant committed an act of oral copulation with someone else;**

2. **The other person did not consent to the act;**

AND

3. **The defendant accomplished the act by**

<Alternative 3A—force or fear>
[force, violence, duress, menace, or fear of immediate and unlawful bodily injury to someone.]

<Alternative 3B—future threats of bodily harm>
[threatening to retaliate against someone when there was a reasonable possibility that the threat would be carried out. A *threat to retaliate* is a threat to kidnap, unlawfully restrain or confine, or inflict extreme pain, serious bodily injury, or death.]

<Alternative 3C—threat of official action>
[threatening to use the authority of a public office to incarcerate, arrest, or deport someone. A *public official* is a person employed by a government agency who has the authority to incarcerate, arrest, or deport. The other person must have reasonably believed that the defendant was a public official even if (he/she) was not.]

***Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[In order to *consent,* a person must act freely and voluntarily and know the nature of the act.]

[Evidence that the defendant and the person (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the person (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[An act is *accomplished by force* if a person uses enough physical force to overcome the other person's will.]

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do [or submit to] something that he or she would not otherwise do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[An act is *accomplished by fear* if the other person is actually and reasonably afraid [or (he/she) is actually but unreasonably afraid and the defendant knows of (his/her) fear and takes advantage of it].]

[The defendant is not guilty of forcible oral copulation if he or she actually and reasonably believed that the other person consented to the act. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the person consented. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2006

BENCH NOTES

Instructional Duty

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

Select the appropriate alternative in element 3 to instruct how the act was allegedly accomplished.

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~8a~~(c)(2) & (3), (k).
- Consent Defined. ▸ Pen. Code, §§ 261.6, 261.7.
- Duress Defined. ▸ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].
- Menace Defined. ▸ Pen. Code, § 261(c) [in context of rape].
- Oral Copulation Defined. ▸ Pen. Code, § 287~~8a~~(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- Threatening to Retaliate Defined. ▸ Pen. Code, § 287~~8a~~(l).
- Fear Defined. ▸ *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651]; *People v. Iniguez* (1994) 7 Cal.4th 847 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [in context of rape].
- Force Defined. ▸ *People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089]; *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826].
- Threatening to Retaliate. ▸ *People v. White* (2005) 133 Cal.App.4th 473, 484–485 [34 Cal.Rptr.3d 848]; *People v. Ward* (1986) 188 Cal.App.3d 459, 468 [233 Cal.Rptr. 477].

COMMENTARY

Penal Code section 287~~8a~~ requires that the oral copulation be "against the will" of the other person. (Pen. Code, § 287~~8a~~(c)(2) & (3), (k).) "Against the will" has been defined as "without consent." (*People v. Key* (1984) 153 Cal.App.3d 888, 895 [203 Cal.Rptr. 144]; see also *People v. Young* (1987) 190 Cal.App.3d 248, 257 [235 Cal.Rptr. 361].)

The instruction includes a definition of the sufficiency of "fear" because that term has meaning in the context of forcible oral copulation that is technical and may not be readily apparent to jurors. (See *People v. Iniguez* (1994) 7 Cal.4th 847, 856–857 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [fear in context of rape].)

The court is not required to instruct sua sponte on the definition of "duress" or "menace" and Penal Code section 288a does not define either term. (*People v.*

Pitmon (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion. The definition of "duress" is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071], and *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]. The definition of "menace" is based on the statutory definitions contained in Penal Code sections 261 and 262 [rape]. (See *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416] [using rape definition in case involving forcible lewd acts].) In *People v. Leal, supra,* 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of "duress" contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute. The court did not discuss the statutory definition of "menace." The court should consider the *Leal* opinion before giving the definition of "menace."

The term "force" as used in the forcible sex offense statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024; *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826]). In *People v. Griffin, supra,* the Supreme Court further stated,

> Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. [*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].] To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." (*People v. Young* (1987) 190 Cal.App.3d 248, 257–258 [235 Cal.Rptr. 361].)

(*People v. Griffin, supra*, 33 Cal.4th at pp. 1023–1024 [emphasis in original]; see also *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826] [*Griffin* reasoning applies to violation of Pen. Code, § 287~~8a~~(c)(2)].)

The committee has provided a bracketed definition of "force," consistent with *People v. Griffin, supra,* that the court may give on request.

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.

- Assault With Intent to Commit Oral Copulation. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [where forcible crime is charged].
- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287~~8a~~.
- Battery. ▸ Pen. Code, § 242.

RELATED ISSUES

Consent Obtained by Fraudulent Representation

A person may also induce someone else to consent to engage in oral copulation by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c.) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567] [rejecting defendant's argument that certain acts were consensual and without physical force, and were only violations of section 266c].)

Consent Withdrawn

A forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection. (*In re John Z.* (2003) 29 Cal.4th 756, 760 [128 Cal.Rptr.2d 783, 60 P.3d 183].) If there is an issue whether consent to oral copulation was withdrawn, see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats*, for language that may be adapted for use in this instruction.

Multiple Acts of Oral Copulation

An accused may be convicted for multiple, nonconsensual sex acts of an identical nature that follow one another in quick, uninterrupted succession. (*People v. Catelli* (1991) 227 Cal.App.3d 1434, 1446–1447 [278 Cal.Rptr. 452] [defendant properly convicted of multiple violations of former Pen. Code, § 288a where he interrupted the acts of copulation and forced victims to change positions].)

Sexual Organ

A man's "sexual organ" for purposes of Penal Code section 287~~8a~~ includes the penis and the scrotum. (Pen. Code, § 287~~8a~~; *People v. Catelli* (1991) 227 Cal.App.3d 1434, 1448–1449 [278 Cal.Rptr. 452].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–34.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1016 Oral Copulation in Concert (Pen. Code, § 287~~8a~~(d))

The defendant[s] [_____ *<insert name[s] if not all defendants in trial charged with this count>*] (is/are) charged [in Count __] with committing oral copulation by acting in concert [with _____ *<insert name[s] or description[s] of uncharged participant[s]>*] [in violation of Penal Code section 287~~8a~~(d)].

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

<Alternative A—defendant committed oral copulation>

[1.] [The defendant personally committed oral copulation and voluntarily acted with someone else who aided and abetted its commission(;/.)]

[OR]

<Alternative B—defendant aided and abetted>

[(1/2).] [The defendant voluntarily aided and abetted someone else who personally committed oral copulation.]

To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>*] committed oral copulation, please refer to the separate instructions that I (will give/have given) you on that crime. To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>*] aided and abetted oral copulation, please refer to the separate instructions that I (will give/have given) you on aiding and abetting. You must apply those instructions when you decide whether the People have proved oral copulation in concert.
<MAKE CERTAIN THAT ALL APPROPRIATE INSTRUCTIONS ON ORAL COPULATION AND AIDING AND ABETTING ARE GIVEN.>

[To prove the crime of oral copulation in concert, the People do not have to prove a prearranged plan or scheme to commit oral copulation.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. (See Pen. Code, § 287~~a~~(d).) The court also has a **sua sponte** duty to instruct on oral copulation. Give one or more of the following instructions defining oral copulation: CALCRIM No. 1015 or CALCRIM Nos. 1017–1022.

Select alternative A or B, or both, depending on whether the defendant personally committed the crime or aided and abetted someone else.

Depending on the evidence, give the final bracketed paragraph on request regarding the lack of a prearranged plan. (See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658].)

Related Instructions
See generally CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~a~~(d).
- Aiding and Abetting. ▸ *People v. Adams* (1993) 19 Cal.App.4th 412, 429, 444–446 [23 Cal.Rptr.2d 512]; *People v. Caldwell* (1984) 153 Cal.App.3d 947, 951–952 [200 Cal.Rptr. 508]; *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658] [in context of sodomy in concert].
- Consent Defined. ▸ *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Oral Copulation. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [when forcible crime is charged].
- Attempted Oral Copulation. ▸ Pen. Code, §§ 664, 287~~a~~.
- Attempted Oral Copulation in Concert. ▸ Pen. Code, §§ 663, 287~~a~~(d).
- Battery. ▸ Pen. Code, § 242.
- Oral Copulation. ▸ Pen. Code, § 287~~a~~.

RELATED ISSUES

See the Related Issues sections under CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*, and CALCRIM No. 1001, *Rape or Spousal Rape in Concert*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31, 36.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [2][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1017 Oral Copulation of an Intoxicated Person (Pen. Code, § 287~~8a~~(a), (i))

The defendant is charged [in Count __] with oral copulation of a person while that person was intoxicated [in violation of Penal Code section 287~~8a~~(i)].

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

1. **The defendant committed an act of oral copulation with another person;**

2. **An (intoxicating/anesthetic/controlled) substance prevented the other person from resisting;**

AND

3. **The defendant knew or reasonably should have known that the effect of an (intoxicating/anesthetic/controlled) substance prevented the other person from resisting.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

A person is *prevented from resisting* **if he or she is so intoxicated that he or she cannot give legal consent. In order to give legal consent, a person must be able to exercise reasonable judgment. In other words, the person must be able to understand and weigh the physical nature of the act, its moral character, and probable consequences. Legal consent is consent given freely and voluntarily by someone who knows the nature of the act involved.**

[_____ *<If appropriate, insert controlled substance>* **(is/are) [a] controlled substance[s].]**

<Defense: Reasonable Belief Capable of Consent>
[The defendant is not guilty of this crime if (he/she) actually and reasonably believed that the person was capable of consenting to oral copulation, even if the defendant's belief was wrong. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman was capable of consenting. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2015

BENCH NOTES

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

A space is provided to identify controlled substances if the parties agree that there is no issue of fact.

Defenses—Instructional Duty
The court has a **sua sponte** duty to instruct on the defense of reasonable belief the person was capable of consent if there is sufficient evidence to support the defense. (See *People v. Giardino* (2000) 82 Cal.App.4th 454, 472 [98 Cal.Rptr.2d 315].)

Related Instructions
CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements ▸ Pen. Code, § 287~~&a~~(a), (i).
- Consent Defined ▸ Pen. Code, § 261.6.
- Controlled Substances ▸ Health & Safety Code, §§ 11054–11058; see *People v. Avila* (2000) 80 Cal.App.4th 791, 798, fn. 7 [95 Cal.Rptr.2d 651].
- Anesthetic Effect ▸ See *People v. Avila* (2000) 80 Cal.App.4th 791, 798–799 [95 Cal.Rptr.2d 651] [in context of sodomy].
- Oral Copulation Defined ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- "Prevented From Resisting" Defined ▸ See *People v. Giardino* (2000) 82 Cal.App.4th 454, 465–466 [98 Cal.Rptr.2d 315] [rape of intoxicated woman].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation ▸ Pen. Code, §§ 663, 287~~&a~~.

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

A defendant may be convicted of both oral copulation of an intoxicated person and oral copulation of an unconscious person. (*People v. Gonzalez* (2014) 60 Cal.4th 533 [179 Cal.Rptr.3d 1, 335 P.3d 1083]; Pen. Code, §§ 287~~8a~~(f), (i).)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency §§ 35-37, 39, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1018 Oral Copulation of an Unconscious Person (Pen. Code, § 287~~8a~~(a), (f))

The defendant is charged [in Count __] with oral copulation of a person who was unconscious of the nature of the act [in violation of Penal Code section 287~~8a~~(f)].

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

1. **The defendant committed an act of oral copulation with another person;**

2. **The other person was unable to resist because (he/she) was unconscious of the nature of the act;**

AND

3. **The defendant knew that the other person was unable to resist because (he/she) was unconscious of the nature of the act.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

A person is *unconscious of the nature of the act* if he or she is (unconscious or asleep/ [or] not aware that the act is occurring/ [or] not aware of the essential characteristics of the act because the perpetrator tricked, lied to, or concealed information from the person/ [or] not aware of the essential characteristics of the act because the perpetrator fraudulently represented that the oral copulation served a professional purpose when it served no professional purpose).

New January 2006; Revised August 2015

BENCH NOTES

Instructional Duty

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

Related Instructions
CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements ▸ Pen. Code, § 287~~8a~~(a), (f).
- Oral Copulation Defined ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].

COMMENTARY

The statutory language describing unconsciousness includes "was not aware, knowing, perceiving, or cognizant that the act occurred." (See Pen. Code, § 287~~8a~~(f)(2)–(4).) The committee did not discern any difference among the statutory terms and therefore used "aware" in the instruction. If there is an issue over a particular term, that term should be inserted in the instruction.

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation ▸ Pen. Code, §§ 663, 287~~8a~~.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

A defendant may be convicted of both oral copulation of an intoxicated person and oral copulation of an unconscious person. (*People v. Gonzalez* (2014) 60 Cal.4th 533 [179 Cal.Rptr.3d 1, 335 P.3d 1083]; Pen. Code, §§ 287~~8a~~(f), (i).)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency §§ 35-37, 39, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1019 Oral Copulation of a Disabled Person (Pen. Code, § 287~~8a~~(a), (g))

The defendant is charged [in Count __] with oral copulation of a mentally or physically disabled person [in violation of Penal Code section 287~~8a~~(g)].

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

1. **The defendant committed an act of oral copulation with someone else;**

2. **The other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;**

AND

3. **The defendant knew or reasonably should have known that the other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting.**

***Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

A person is *prevented from legally consenting* if he or she is unable to understand the act, its nature, and possible consequences.

New January 2006; Revised August 2012

BENCH NOTES

Instructional Duty

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

Related Instructions

CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~8a~~(a), (g).
- Consent Defined. ▸ Pen. Code, § 261.6; *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].
- Oral Copulation Defined. ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- This Instruction Completely Explains Inability to Give Legal Consent. ▸ *People v. Miranda* (2011) 199 Cal.App.4th 1403, 1419, fn. 13 [132 Cal.Rptr.3d 315] [in dicta].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287~~8a~~.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*, and CALCRIM No. 1004, *Rape of a Disabled Woman*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33, 35.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1020 Oral Copulation of a Disabled Person in a Mental Hospital (Pen. Code, § 287~~8a~~(a), (h))

The defendant is charged [in Count __] with oral copulation of a mentally or physically disabled person in a mental hospital [in violation of Penal Code section 287~~8a~~(h)].

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

1. **The defendant committed an act of oral copulation with someone else;**

2. **The other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;**

3. **The defendant knew or reasonably should have known that the other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;**

AND

4. **At the time of the act, both people were confined in a state hospital or other mental health facility.**

***Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

A person is *incapable of giving legal consent* if he or she is unable to understand the act, its nature, and possible consequences.

[_____ *<Insert name of facility>* **is a (state hospital/mental health facility).] [A *state hospital* or *other mental health facility* includes a state hospital for the care and treatment of the mentally disordered or any other public or private facility approved by a county mental health director for the care and treatment of the mentally disordered.]**

New January 2006

BENCH NOTES

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

A space is provided to identify a facility as a state hospital or other mental health facility if the parties agree that there is no issue of fact. Alternatively, if there is a factual dispute about whether an institution is a state hospital or other mental health facility, give the final bracketed sentence. (See Pen. Code, § 287~~a~~(h).)

Related Instructions
CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~a~~(a), (h).
- State Hospital or Mental Health Facility Defined. ▸ Pen. Code, § 287~~a~~(h); see Welf. & Inst. Code, § 7100 [county psychiatric facilities], § 7200 [state hospitals for mentally disordered], § 7500 [state hospitals for developmentally disabled].
- Legal Consent. ▸ *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].
- Oral Copulation Defined. ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287~~a~~.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*, and CALCRIM No. 1004, *Rape of a Disabled Woman*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33, 35.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1021 Oral Copulation by Fraud (Pen. Code, § 287~~8a~~(a), (j))

The defendant is charged [in Count __] with oral copulation by fraud [in violation of Penal Code section 287~~8a~~(j)].

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

1. **The defendant committed an act of oral copulation with someone else;**

2. **The other person submitted to the oral copulation because (he/she) believed the defendant was someone (he/she) knew, other than the defendant;**

AND

3. **The defendant tricked, lied, [used an artifice or pretense,] or concealed information, intending to make the other person believe (he/she) was someone (he/she) knew, while intending to hide (his/her) own identity.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

New January 2006; Revised February 2015

BENCH NOTES

Instructional Duty

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

Former Penal Code section 288a(a) was amended effective September 9, 2013, in response to *People v. Morales* (2013) 212 Cal.App.4th 583 [150 Cal.Rptr.3d 920].

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~8a~~(a), (j).

- Oral Copulation Defined. ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287~~8a~~.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crime Against Decency, § 38.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [6] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1022 Oral Copulation While in Custody (Pen. Code, § 287~~8a~~(a), (e))

The defendant is charged [in Count __] with oral copulation committed while (he/she) was confined in (state prison/a local detention facility) [in violation of Penal Code section 287~~8a~~(e)].

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

1. **The defendant participated in an act of oral copulation with someone else;**

AND

2. **At the time of the act, the defendant was confined in a (state prison/local detention facility).**

***Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[_____ <*insert name of facility*> is a (state prison/local detention facility).] [A state prison is any prison or institution maintained by the Department of Corrections and Rehabilitation.] [A local detention facility includes any city, county, or regional jail or other facility used to confine adults [or both adults and minors].]

New January 2006; Revised August 2016

BENCH NOTES

Instructional Duty

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

A space is provided to identify a state prison or local detention facility if the parties agree that there is no issue of fact. Alternatively, if there is a factual dispute about whether the defendant was confined in a state prison or local detention facility, give the second or third bracketed sentences (or both, if necessary). (See Pen. Code, §§ 4504, 5003, 6031.4.)

Related Instructions
CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~8a~~(a), (e).
- Local Detention Facility Defined. ▸ Pen. Code, § 6031.4.
- State Prison Defined. ▸ Pen. Code, §§ 4504, 5003.
- Oral Copulation Defined. ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287~~8a~~.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 35, 36, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [4] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1070 Unlawful Sexual Intercourse: Defendant 21 or Older (Pen. Code, § 261.5(a) & (d))

The defendant is charged [in Count __] with having unlawful sexual intercourse with a person who was under the age of 16 years at a time after the defendant had reached (his/her) 21st birthday [in violation of Penal Code section 261.5(d)].

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

1. **The defendant had sexual intercourse with another person;**

2. **The defendant and the other person were not married to each other at the time of the intercourse;**

3. **The defendant was at least 21 years old at the time of the intercourse;**

AND

4. **The other person was under the age of 16 years at the time of the intercourse.**

Sexual intercourse **means any penetration, no matter how slight, of the vagina or genitalia by the penis. [Ejaculation is not required.]**

[It is not a defense that the other person may have consented to the intercourse.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. In order for reasonable and actual belief to excuse the defendant's behavior, there must be evidence tending to show that (he/she) reasonably and actually believed that the other person was age 18 or older. If you have a reasonable doubt about whether the defendant reasonably and actually believed that the other person was age 18 or older, you must find (him/her) not guilty.]

New January 2006; Revised April 2008

BENCH NOTES

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

For a discussion of the **sua sponte** duty to instruct on the defense of mistake of fact, see CALCRIM No. 3406.

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty
If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

Related Instruction
CALCRIM No. 3406, *Mistake of Fact.*

AUTHORITY

- Elements. ▸ Pen. Code, § 261.5(a) & (d).
- Minor's Consent Not a Defense. ▸ *People v. Kemp* (1934) 139 Cal.App. 48, 51.
- Penetration Defined. ▸ Pen. Code, § 263; *People v. Karsai* (1982) 131 Cal.App.3d 224, 233–234 [182 Cal.Rptr.406], disapproved on other grounds by *People v. Jones* (1988) 46 Cal.3d 585, 600 [250 Cal.Rptr. 635, 758 P.2d 1165].
- Good Faith Belief in Victim's Age. ▸ *People v. Zeihm* (1974) 40 Cal.App.3d 1085, 1089 [115 Cal.Rptr. 528].

LESSER INCLUDED OFFENSES

- Attempted Unlawful Sexual Intercourse. ▸ Pen. Code, §§ 664, 261.5; see, e.g., *People v. Nicholson* (1979) 98 Cal.App.3d 617, 622–624 [159 Cal.Rptr. 766].

Contributing to the delinquency of a minor (Pen. Code, § 272) is not a lesser included offense of unlawful sexual intercourse. (*People v. Bobb* (1989) 207 Cal.App.3d 88, 93–96 [254 Cal.Rptr. 707], disapproved on another ground in *People v. Barton* (1995) 12 Cal.4th 186, 198, fn. 7 [47 Cal.Rptr.2d 569, 906 P.2d 531].)

RELATED ISSUES

Calculating Age

The "birthday rule" of former Civil Code section 26 (now see Fam. Code, § 6500) applies. A person attains a given age as soon as the first minute of his or her birthday has begun, not on the day before the birthday. (*In re Harris* (1993) 5 Cal.4th 813, 844–845, 849 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Participant Must be Over 21

One of the two participants in the act of unlawful sexual intercourse must be over 21 and the other person must be under 16. Proof that an aider and abettor was over 21 is insufficient to sustain the aider and abettor's conviction if neither of the actual participants was over 21 years old. (See *People v. Culbertson* (1985) 171 Cal.App.3d 508, 513, 515 [217 Cal.Rptr. 347] [applying same argument to section 287~~8a~~(c), where perpetrator must be 10 years older than victim under 14].)

Mistaken Belief About Victim's Age

A defendant is not entitled to a mistake of fact instruction if he claims that he believed that the complaining witness was over 16. His belief would still constitute the *mens rea* of intending to have sex with a minor. (*People v. Scott* (2000) 83 Cal.App.4th 784, 800–801 [100 Cal.Rptr.2d 70].) However, if he claims that he believed that the complaining witness was over 18 years old, he is entitled to the mistake of fact instruction. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673].)

Married Minor Victim

A defendant may be convicted of unlawful sexual intercourse even if the minor victim is married or was previously married to another person. (*People v. Courtney* (1960) 180 Cal.App.2d 61, 62 [4 Cal.Rptr. 274] [construing former statute]; *People v. Caldwell* (1967) 255 Cal.App.2d 229, 230–231 [63 Cal.Rptr. 63].)

Sterility
Sterility is not a defense to unlawful sexual intercourse. (*People v. Langdon* (1987) 192 Cal.App.3d 1419, 1421 [238 Cal.Rptr. 158].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, §§ 45–46.

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 20–24.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[3][a] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1080 Oral Copulation With Person Under 14 (Pen. Code, § 287~~8a~~(c)(1))

The defendant is charged [in Count __] with oral copulation of a person who was under the age of 14 and at least 10 years younger than the defendant [in violation of Penal Code section 287~~8a~~(c)(1)].

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

1. **The defendant participated in an act of oral copulation with another person;**

AND

2. **At the time of the act, the other person was under the age of 14 and was at least 10 years younger than the defendant.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006

BENCH NOTES

Instructional Duty

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~a~~(c)(1).
- Oral Copulation Defined. ▸ Pen. Code, § 287~~a~~(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884] [in context of lewd acts with children].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation With Minor Under 14 ▸ Pen. Code, §§ 664, 287 ~~a~~(c)(1).
- Oral Copulation With Minor Under 18 ▸ *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rptr. 199].

RELATED ISSUES

Mistake of Fact Defense Not Available
In *People v. Olsen* (1984) 36 Cal.3d 638, 649 [205 Cal.Rptr. 492, 685 P.2d 52], the court held that the defendant's mistaken belief that the victim was over 14 was no defense to a charge of lewd and lascivious acts with a child under 14.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [3][b] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1081 Oral Copulation With Minor: Defendant 21 or Older (Pen. Code, § 287~~8a~~(b)(2))

The defendant is charged [in Count __] with engaging in an act of oral copulation with a person who was under the age of 16 years at a time after the defendant had reached (his/her) 21st birthday [in violation of Penal Code section 287~~8a~~(b)(2)].

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

1. **The defendant participated in an act of oral copulation with another person;**

2. **The defendant was at least 21 years old at the time of the act;**

AND

3. **The other person was under the age of 16 years at the time of the act.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006

BENCH NOTES

Instructional Duty

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty

If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~8a~~(b)(2).
- Oral Copulation Defined. ▸ Pen. Code, § 287~~8a~~(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884] [in context of lewd acts with children].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation With Minor When Defendant Over 21. ▸ Pen. Code, §§ 664, 288a(b)(2).
- Oral Copulation With Minor Under 18. ▸ See *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rptr. 199] [both in context of section 288a(c)].

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [3][b] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1082 Oral Copulation With Person Under 18 (Pen. Code, § 287~~8a~~(b)(1))

The defendant is charged [in Count __] with oral copulation with a person who was under the age of 18 [in violation of Penal Code section 287~~8a~~(b)(1)].

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

1. **The defendant participated in an act of oral copulation with another person;**

AND

2. **The other person was under the age of 18 when the act was committed.**

Oral copulation **is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised March 2017

BENCH NOTES

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty

If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

AUTHORITY

- Elements. ▸ Pen. Code, § 287~~a~~(b)(1).
- Oral Copulation Defined. ▸ Pen. Code, § 287~~a~~(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884] [in context of lewd acts with children].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].
- Mistake of Fact Regarding Age. ▸ *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673] [in context of statutory rape]; *People v. Peterson* (1981) 126 Cal.App.3d 396, 397 [178 Cal.Rptr. 734].

LESSER INCLUDED OFFENSES

A violation of Penal Code section 288.3 is not a lesser included offense of attempted oral copulation, because attempt can be committed without contacting or communicating with the victim under the statutory elements test. (*People v. Medelez* (2016) 2 Cal.App.5th 659, 663, 206 Cal.Rptr.3d 402].)

RELATED ISSUES

Minor Perpetrator

A minor under age 14 may be adjudged responsible for violating Penal Code section 287~~a~~(b)(1) upon clear proof of the minor's knowledge of wrongfulness.

(Pen. Code, § 26; *In re Paul C.* (1990) 221 Cal.App.3d 43, 49 [270 Cal.Rptr. 369].)

See the Related Issues section under CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 54.

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 35–37, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.20[1][c], [3][b], 142.23[2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:17, 12:18 (The Rutter Group).

1090 Sodomy With Person Under 14 (Pen. Code, § 286(c)(1))

The defendant is charged [in Count __] with sodomy with a person who was under the age of 14 years and at least 10 years younger than the defendant [in violation of Penal Code section 286(c)(1)].

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

1. **The defendant participated in an act of sodomy with another person;**

AND

2. **At the time of the act, the other person was under the age of 14 years and was at least 10 years younger than the defendant.**

***Sodomy* is any penetration, no matter how slight, of the anus of one person by the penis of another person. [Ejaculation is not required.]**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006

BENCH NOTES

Instructional Duty

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements. ▸ Pen. Code, § 286(c)(1).
- Sodomy Defined. ▸ Pen. Code, § 286(a); see *People v. Singh* (1928) 62 Cal.App. 450, 452 [217 P. 121] [ejaculation is not required].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].

LESSER INCLUDED OFFENSES

- Attempted Sodomy With Minor Under 14. ▸ Pen. Code, §§ 664, 286(c)(1).
- Sodomy With Minor Under 18. ▸ See *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rptr. 199] [both in context of Pen. Code, § 287~~sa~~(c)].

RELATED ISSUES

Mistake of Fact Defense Not Available
In *People v. Olsen* (1984) 36 Cal.3d 638 [205 Cal.Rptr. 492, 685 P.2d 52], the court held that the defendant's mistaken belief that the victim was over 14 was no defense to a charge of lewd and lascivious acts with a child under 14.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 25–27.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][b], [3][b] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1091 Sodomy With Minor: Defendant 21 or Older (Pen. Code, § 286(b)(2))

The defendant is charged [in Count __] with engaging in an act of sodomy with a person who was under the age of 16 years at a time after the defendant had reached (his/her) 21st birthday [in violation of Penal Code section 286(b)(2)].

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

1. **The defendant participated in an act of sodomy with another person;**

2. **The defendant was at least 21 years old at the time of the act;**

AND

3. **The other person was under the age of 16 years at the time of the act.**

Sodomy **is any penetration, no matter how slight, of the anus of one person by the penis of another person. [Ejaculation is not required.]**

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006

BENCH NOTES

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rtpr.2d 361, 393 P.2d 673].)

Defenses—Instructional Duty
If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

AUTHORITY

- Elements. ▸ Pen. Code, § 286(b)(2).
- Sodomy Defined. ▸ Pen. Code, § 286(a); see *People v. Singh* (1923) 62 Cal.App. 450, 452 [217 P. 121] [ejaculation is not required].
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].

LESSER INCLUDED OFFENSES

- Attempted Sodomy With Minor When Defendant Over 21. ▸ Pen. Code, §§ 664, 286(b)(2).
- Sodomy With Minor Under 18. ▸ See *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rtpr. 199] [both in context of Pen. Code, § 287~~8a~~(c)].

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 25–27.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.20[1][b], [3][b], 142.23[2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1101 Sexual Penetration With Minor: Defendant 21 or Older (Pen. Code, § 289(i))

The defendant is charged [in Count __] with participating in an act of sexual penetration with a person who was under the age of 16 years at a time after the defendant had reached (his/her) 21st birthday [in violation of Penal Code section 289(i)].

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

1. **The defendant participated in an act of sexual penetration with another person;**

2. **The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);**

3. **The defendant was at least 21 years old at the time of the act;**

AND

4. **The other person was under the age of 16 years at the time of the act.**

Sexual penetration **means (penetration, however slight, of the genital or anal openings of another person/ [or] causing another person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, no matter how slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.**

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>
[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006

BENCH NOTES

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

Give the bracketed paragraph that begins with "It is not a defense that" on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Defenses—Instructional Duty
If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

AUTHORITY

- Elements. ▸ Pen. Code, § 289(i).
- Foreign Object, Substance, Instrument, or Device Defined. ▸ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a "foreign object"].

- Sexual Penetration Defined. ▸ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined. ▸ Pen. Code, § 289(k)(3).
- Minor's Consent Not a Defense. ▸ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].
- Sexual Abuse Defined. ▸ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

LESSER INCLUDED OFFENSES

- Attempted Sexual Penetration With Minor When Defendant Over 21. ▸ Pen. Code, §§ 664, 289(i).
- Sexual Penetration With Minor Under 18. ▸ See *People v. Culbertson* (1985) 171 Cal.App.3d 508, 516 [217 Cal.Rptr. 347]; *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1097–1098 [207 Cal.Rptr. 199] [both in context of Pen. Code, § 287~~8a~~(c)].

RELATED ISSUES

See the Related Issues section under CALCRIM 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 47, 48.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.20[1][d], [3][b], 142.23[2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1123 Aggravated Sexual Assault of Child Under 14 Years (Pen. Code, § 269(a))

The defendant is charged [in Count __] with aggravated sexual assault of a child who was under the age of 14 years and at least seven years younger than the defendant [in violation of Penal Code section 269(a)].

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

1. **The defendant committed _____** <*insert sex offense specified in Pen. Code, § 269(a)(1)–(5)*> **on another person;**

AND

2. **When the defendant acted, the other person was under the age of 14 years and was at least seven years younger than the defendant.**

To decide whether the defendant committed _____ <*insert sex offense specified in Pen. Code, § 269(a)(1)–(5)*>**, please refer to the separate instructions that I (will give/have given) you on that crime.**

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised June 2007

BENCH NOTES

Instructional Duty

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

In element 1 and in the sentence following element 2, insert the sex offense specified in Penal Code section 269(a)(1)–(5) that is charged. The sex offenses specified in section 269(a)(1)–(5) and their applicable instructions are:

1. Rape (Pen. Code, § 261(a)(2); see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats*).

2. Rape or sexual penetration in concert (Pen. Code, § 264.1; see CALCRIM No. 1001, *Rape or Spousal Rape in Concert*, and CALCRIM No.1046, *Sexual Penetration in Concert*).

3. Sodomy (Pen. Code, § 286(c)(2); see CALCRIM No. 1030, *Sodomy by Force, Fear, or Threats*).

4. Oral copulation (Pen. Code, § 288a(c)(2); see CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*).

5. Sexual penetration (Pen. Code, § 289(a); see CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*).

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements. ▸ Pen. Code, § 269(a).

LESSER INCLUDED OFFENSES

- Simple Assault. ▸ Pen. Code, § 240.
- Underlying Sex Offense. ▸ Pen. Code, §§ 261(a)(2) [rape], 264.1 [rape or sexual penetration in concert], 286(c)(2) [sodomy], 287~~8a~~(c)(2) [oral copulation], 289(a) [sexual penetration].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, § 54.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[2][a], [c], [7][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1128 Engaging in Oral Copulation or Sexual Penetration With Child 10 Years of Age or Younger (Pen. Code, § 288.7(b))

The defendant is charged [in Count __] with engaging in (oral copulation/ [or] sexual penetration) with a child 10 years of age or younger [in violation of Penal Code section 288.7(b)].

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

1. **The defendant engaged in an act of (oral copulation/ [or] sexual penetration) with _____** *<insert name of complaining witness>***;**

2. **When the defendant did so, _____** *<insert name of complaining witness>* **was 10 years of age or younger;**

3. **At the time of the act, the defendant was at least 18 years old.**

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.]

[*Sexual penetration* means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) by any foreign object, substance, instrument, device, or any unknown object for the purpose of sexual abuse, arousal, or gratification.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.]

New August 2009; Revised April 2010, February 2013, February 2015, September 2017, September 2019

BENCH NOTES

Instructional Duty

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

When sexual penetration is charged under Penal Code 288.7(b), instruct that the defendant must have specific intent. *People v. Saavedra* (2018) 24 Cal.App.5th 605, 613-615 [234 Cal.Rptr.3d 544].

AUTHORITY

- Elements. ▸ Pen. Code, § 288.7(b).
- Sexual Penetration Defined. ▸ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not vagina].
- Unknown Object Defined. ▸ Pen. Code, § 289(k)(3).
- Foreign Object, Substance, Instrument, or Device Defined. ▸ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [finger is "foreign object"].
- Oral Copulation Defined. ▸ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- Calculating Age. ▸ Fam. Code, § 6500; *People v. Cornett* (2012) 53 Cal.4th 1261, 1264, 1275 [139 Cal.Rptr.3d 837, 274 P.3d 456] ["10 years of age or younger" means "under 11 years of age"]; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].
- Sexual Abuse Defined. ▸ *People v. White* (1986) 179 Cal.App.3d 193, 205-206 [224 Cal.Rptr. 467].
- This Instruction Upheld. ▸ *People v. Saavedra* (2018) 24 Cal.App.5th 605, 615 [234 Cal.Rptr.3d 544].

LESSER INCLUDED OFFENSE

- Attempted Sexual Penetration. *People v. Ngo* (2014) 225 Cal.App.4th 126, 158-161 [170 Cal.Rptr.3d 90].
- Attempt to commit oral copulation with a child 10 years of age or younger is **not** a lesser included offense. *People v. Mendoza* (2015) 240 Cal.App.4th 72, 83 [191 Cal.Rptr.3d 905].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 58.

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[7] (Matthew Bender).

1191A Evidence of Uncharged Sex Offense

The People presented evidence that the defendant committed the crime[s] of _____ <*insert description of offense[s]*> that (was/were) not charged in this case. (This/These) crime[s] (is/are) defined for you in these instructions.

You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offense[s]. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

If the People have not met this burden of proof, you must disregard this evidence entirely.

If you decide that the defendant committed the uncharged offense[s], you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit [and did commit] _____ <*insert charged sex offense[s]*>, as charged here. If you conclude that the defendant committed the uncharged offense[s], that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of _____ <*insert charged sex offense[s]*>. The People must still prove (the/each) _____ (charge/ [and] allegation) beyond a reasonable doubt.

[Do not consider this evidence for any other purpose [except for the limited purpose of _____ <*insert other permitted purpose, e.g., determining the defendant's credibility*>].]

New January 2006; Revised April 2008, February 2013, February 2014, March 2017, September 2019

BENCH NOTES

Instructional Duty

Although there is ordinarily no sua sponte duty (*People v. Cottone* (2013) 57 Cal.4th 269, 293, fn. 15 [159 Cal.Rptr.3d 385, 303 P.3d 1163]), the court must give this instruction on request when evidence of other sexual offenses has been introduced. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 924 [89 Cal.Rptr.2d

847, 986 P.2d 182] [error to refuse limiting instruction on request]; *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1317–1318 [97 Cal.Rptr.2d 727] [in context of prior acts of domestic violence].)

Evidence Code section 1108(a) provides that "evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101." Subdivision (d)(1) defines "sexual offense" as "a crime under the law of a state or of the United States that involved any of the following[,]" listing specific sections of the Penal Code as well as specified sexual conduct. In the first sentence, the court must insert the name of the offense or offenses allegedly shown by the evidence. The court **must** also instruct the jury on elements of the offense or offenses.

In the fourth paragraph, the committee has placed the phrase "and did commit" in brackets. One appellate court has criticized instructing the jury that it may draw an inference about disposition. (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823].) The court should review the Commentary section below and give the bracketed phrase at its discretion.

Give the bracketed sentence that begins with "Do not consider" on request.

Related Instructions
CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191B, *Evidence of Charged Sex Offense*.

CALCRIM No. 852A, *Evidence of Uncharged Domestic Violence.*

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*
CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person*.

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

AUTHORITY

- Instructional Requirement. ▸ Evid. Code, § 1108(a); see *People v. Reliford* (2003) 29 Cal.4th 1007, 1012–1016 [130 Cal.Rptr.2d 254, 62 P.3d 601]; *People v. Frazier* (2001) 89 Cal.App.4th 30, 37 [107 Cal.Rptr.2d 100]; *People v. Falsetta, supra,* 21 Cal.4th at pp. 923–924 [dictum].

- Previous Version of CALCRIM No. 1191 Upheld. ‣ *People v. Schnabel* (2007) 150 Cal.App.4th 83, 87 [57 Cal.Rptr.3d 922]; *People v. Cromp* (2007) 153 Cal.App.4th 476, 480 [62 Cal.Rptr.3d 848].
- This Instruction Upheld. ‣ *People v. Phea* (2018) 29 Cal.App.5th 583, 614 [240 Cal.Rptr.3d 526].
- Sexual Offense Defined. ‣ Evid. Code, § 1108(d)(1).
- Other Crimes Proved by Preponderance of Evidence. ‣ *People v. Carpenter* (1997) 15 Cal.4th 312, 382 [63 Cal.Rptr.2d 1, 935 P.2d 708]; *People v. James, supra,* 81 Cal.App.4th at p. 1359; *People v. Van Winkle* (1999) 75 Cal.App.4th 133, 146 [89 Cal.Rptr.2d 28].
- Propensity Evidence Alone Is Not Sufficient to Support Conviction Beyond a Reasonable Doubt. ‣ *People v. Hill* (2001) 86 Cal.App.4th 273, 277–278 [103 Cal.Rptr.2d 127]; see *People v. Younger* (2000) 84 Cal.App.4th 1360, 1382 [101 Cal.Rptr.2d 624] [in context of prior acts of domestic violence]; *People v. James, supra,* 81 Cal.App.4th at pp. 1357–1358, fn. 8 [same].
- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity. ‣ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186, 206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].

COMMENTARY

The fourth paragraph of this instruction tells the jury that they may draw an inference of disposition. (See *People v. Hill* (2001) 86 Cal.App.4th 273, 275–279 [103 Cal.Rptr.2d 127]; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334–1335 [92 Cal.Rptr.2d 433] [in context of prior acts of domestic violence].) One appellate court, however, suggests using more general terms to instruct the jury how they may use evidence of other sexual offenses, "leaving particular inferences for the argument of counsel and the jury's common sense." (*People v. James, supra,* 81 Cal.App.4th at p. 1357, fn. 8 [includes suggested instruction].) If the trial court adopts this approach, the fourth paragraph may be replaced with the following:

> If you decide that the defendant committed the other sexual offense[s], you may consider that evidence and weigh it together with all the other evidence received during the trial to help you determine whether the defendant committed _____ <*insert charged sex offense*>. Remember, however, that evidence of another sexual offense is not sufficient alone to find the defendant guilty of _____ <*insert charged sex offense*>. The People must still prove (the/each) _____(charge/

[and] allegation) of _____ <*insert charged sex offense*> beyond a reasonable doubt.

RELATED ISSUES

Constitutional Challenges
Evidence Code section 1108 does not violate a defendant's rights to due process (*People v. Falsetta* (1999) 21 Cal.4th 903, 915–922 [89 Cal.Rptr.2d 847, 986 P.2d 182]; *People v. Branch* (2001) 91 Cal.App.4th 274, 281 [109 Cal.Rptr.2d 870]; *People v. Fitch* (1997) 55 Cal.App.4th 172, 184 [63 Cal.Rptr.2d 753]) or equal protection (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1310–1313 [97 Cal.Rptr.2d 727]; *People v. Fitch, supra,* 55 Cal.App.4th at pp. 184–185).

Expert Testimony
Evidence Code section 1108 does not authorize expert opinion evidence of sexual propensity during the prosecution's case-in-chief. (*People v. McFarland* (2000) 78 Cal.App.4th 489, 495–496 [92 Cal.Rptr.2d 884] [expert testified on ultimate issue of abnormal sexual interest in child].)

Rebuttal Evidence
When the prosecution has introduced evidence of other sexual offenses under Evidence Code section 1108(a), the defendant may introduce rebuttal character evidence in the form of opinion evidence, reputation evidence, and evidence of specific incidents of conduct under similar circumstances. (*People v. Callahan* (1999) 74 Cal.App.4th 356, 378–379 [87 Cal.Rptr.2d 838].)

Subsequent Offenses Admissible
"[E]vidence of subsequently committed sexual offenses may be admitted pursuant to Evidence Code section 1108." (*People v. Medina* (2003) 114 Cal.App.4th 897, 903 [8 Cal.Rptr.3d 158].)

Evidence of Acquittal
If the court admits evidence that the defendant committed a sexual offense that the defendant was previously acquitted of, the court must also admit evidence of the acquittal. (*People v. Mullens* (2004) 119 Cal.App.4th 648, 663 [14 Cal.Rptr.3d 534].)

See also the Related Issues section of CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc*.

SECONDARY SOURCES

1 Witkin, California Evidence (5th ed. 2012) Circumstantial Evidence, §§ 98–100.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.23[3][e][ii], [4] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure § 12:9 (The Rutter Group).

1203 Kidnapping: For Robbery, Rape, or Other Sex Offenses (Pen. Code, § 209(b))

The defendant is charged [in Count __] with kidnapping for the purpose of (robbery/rape/spousal rape/oral copulation/sodomy/sexual penetration) [in violation of Penal Code section 209(b)].

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

1. **The defendant intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or]_____**<*insert other offense specified in statute*>**;**

2. **Acting with that intent, the defendant took, held, or detained another person by using force or by instilling a reasonable fear;**

3. **Using that force or fear, the defendant moved the other person [or made the other person move] a substantial distance;**

4. **The other person was moved or made to move a distance beyond that merely incidental to the commission of a (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or]_____**<*insert other offense specified in statute*>**;**

5. **When that movement began, the defendant already intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____**<*insert other offense specified in statute*>**;**

[AND]

6. **The other person did not consent to the movement(;/.)**

<*Give element 7 if instructing on reasonable belief in consent.*>
[AND

7. **The defendant did not actually and reasonably believe that the other person consented to the movement.]**

As used here, *substantial distance* means more than a slight or trivial distance. The movement must have increased the risk of [physical or psychological] harm to the person beyond that necessarily present in the (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or]_____<*insert other offense specified in statute*>**. In deciding whether the movement was sufficient, consider all the circumstances relating to the movement.**

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

[To be guilty of kidnapping for the purpose of (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration), the defendant does not actually have to commit the (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or]_____<*insert other offense specified in statute*>**.]**

To decide whether the defendant intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or]_____<*insert other offense specified in statute*>**), please refer to the separate instructions that I (will give/have given) you on that crime.**

<*Defense: Good Faith Belief in Consent*>
[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the other person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<*Defense: Consent Given*>
[The defendant is not guilty of kidnapping if the other person consented to go with the defendant. The other person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient mental capacity to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the other person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the other person withdrew consent, the defendant committed the crime as I have defined it.]

New January 2006; Revised June 2007, April 2008, February 2013, August 2013

BENCH NOTES

Instructional Duty

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

In addition, the court has a **sua sponte** duty to instruct on the elements of the alleged underlying crime.

Give the bracketed definition of "consent" on request.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) Give the bracketed paragraph on the defense of consent. On request, if supported by the evidence, also give the bracketed paragraph that begins with "Consent may be withdrawn." (See People v. Camden (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The defendant's reasonable and actual belief in the victim's consent to go with the defendant may be a defense. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].)

Timing of Necessary Intent

No court has specifically stated whether the necessary intent must precede all movement of the victim, or only one phase of it involving an independently adequate asportation.

Related Instructions
Kidnapping a child for the purpose of committing a lewd or lascivious act is a separate crime under Penal Code section 207(b). See CALCRIM No. 1200, *Kidnapping: For Child Molestation*.

AUTHORITY

- Elements. ▸ Pen. Code, § 209(b)(1); *People v. Robertson* (2012) 208 Cal. App. 4th 965, 982 [146 Cal.Rptr.3d 66]; People v. Vines (2011) 51 Cal.4th 830, 869–870 & fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; People v. Martinez (1999) 20 Cal.4th 225, 232 & fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512]; People v. Rayford (1994) 9 Cal.4th 1 [36 Cal.Rptr.2d 317]; People v. Daniels (1969) 71 Cal.2d. 1119 [80 Cal.Rptr. 897, 459 P.2d 225].
- Robbery Defined. ▸ Pen. Code, § 211.
- Rape Defined. ▸ Pen. Code, § 261.
- Other Sex Offenses Defined. ▸ Pen. Code, §§ 262 [spousal rape], 264.1 [acting in concert], 286 [sodomy], 287~~8a~~ [oral copulation], 289 [sexual penetration].
- Intent to Commit Robbery Must Exist at Time of Original Taking. ▸ *People v. Tribble* (1971) 4 Cal.3d 826, 830–832 [94 Cal.Rptr. 613, 484 P.2d 589]; *People v. Bailey* (1974) 38 Cal.App.3d 693, 699 [113 Cal.Rptr. 514]; see *People v. Thornton* (1974) 11 Cal.3d 738, 769–770 [114 Cal.Rptr. 467], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668 [160 Cal.Rptr. 84, 603 P.2d 1].
- Kidnapping to Effect Escape From Robbery. ▸ *People v. Laursen* (1972) 8 Cal.3d 192, 199–200 [104 Cal.Rptr. 425, 501 P.2d 1145] [violation of section 209 even though intent to kidnap formed after robbery commenced].
- Kidnapping Victim Need Not Be Robbery Victim. ▸ *People v. Laursen* (1972) 8 Cal.3d 192, 200, fn. 7 [104 Cal.Rptr. 425, 501 P.2d 1145].
- Use of Force or Fear. ▸ See *People v. Martinez* (1984) 150 Cal.App.3d 579, 599–600 [198 Cal.Rptr. 565], disapproved on other grounds in *People v. Hayes* (1990) 52 Cal.3d 577, 627–628, fn. 10 [276 Cal.Rptr. 874, 802 P.2d 376]; *People v. Jones* (1997) 58 Cal.App.4th 693, 713–714 [68 Cal.Rptr.2d 506].
- Movement of Victim Need Not Substantially Increase Risk of Harm to Victim. ▸ *People v. Robertson* (2012) 208 Cal.App.4th 965, 982 [146 Cal.Rptr.3d 66]; *People v. Vines* (2011) 51 Cal.4th 830, 870 fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; *People v. Martinez* (1999) 20 Cal.4th 225, 232 fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512].

- Movement Must Be for Illegal Purpose or Intent if Victim Incapable of Consent. ▸ *In re Michele D.* (2002) 29 Cal.4th 600, 610–611 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Oliver* (1961) 55 Cal.2d 761, 768 [12 Cal.Rptr. 865, 361 P.2d 593].

LESSER INCLUDED OFFENSES

- Kidnapping. ▸ Pen. Code, § 207; *People v. Bailey* (1974) 38 Cal.App.3d 693, 699 [113 Cal.Rptr. 514]; see *People v. Jackson* (1998) 66 Cal.App.4th 182, 189 [77 Cal.Rptr.2d 564].
- Attempted Kidnapping. ▸ Pen. Code, §§ 664, 207.
- False Imprisonment. ▸ Pen. Code, §§ 236, 237; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866]; *People v. Shadden* (2001) 93 Cal.App.4th 164, 171 [112 Cal.Rptr.2d 826].

RELATED ISSUES

Psychological Harm

Psychological harm may be sufficient to support conviction for aggravated kidnapping under Penal Code section 209(b). An increased risk of harm is not limited to a risk of bodily harm. (*People v. Nguyen* (2000) 22 Cal.4th 872, 885–886 [95 Cal.Rptr.2d 178, 997 P.2d 493] [substantial movement of robbery victim that posed substantial increase in risk of psychological trauma beyond that expected from stationary robbery].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 293–300, 310, 311–313.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

1502. Arson: Inhabited Structure or Property (Pen. Code, § 451(b))

The defendant is charged [in Count __] with arson that burned an (inhabited structure /[or] inhabited property) [in violation of Penal Code section 451(b)].

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

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

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

AND

3. **The fire burned an (inhabited structure /[or] inhabited property).**

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

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

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

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

A (structure /[or] property) is *inhabited* if someone ~~lives there and either is present or has left but intends to return~~uses it as a dwelling, whether or not someone is inside at the time of the fire**. An (inhabited structure /[or] inhabited property) does not include the land on which it is located.**

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

New January 2006; Revised February 2013, August 2016, March 2017, September 2019

BENCH NOTES

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

Related Instructions
If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

AUTHORITY

- Elements ▸ Pen. Code, § 451(b).
- Inhabited Defined ▸ Pen. Code, § 450; *People v. Jones* (1988) 199 Cal.App.3d 543 [245 Cal.Rptr. 85].
- Inhabitant Must Be Alive at Time of Arson ▸ *People v. Vang* (2016) 1 Cal.App.5th 377, 382-387 [204 Cal.Rptr.3d 455].
- Structure and Maliciously Defined ▸ Pen. Code, § 450.
- To Burn Defined ▸ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Arson ▸ Pen. Code, § 451.
- Attempted Arson ▸ Pen. Code, § 455.
- Unlawfully Causing a Fire ▸ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

RELATED ISSUES

Inhabited Apartment
Defendant's conviction for arson of an inhabited structure was proper where he set fire to his estranged wife's apartment several days after she had vacated it. Although his wife's apartment was not occupied, it was in a large apartment building where many people lived; it was, therefore, occupied for purposes of the

arson statute. (*People v. Green* (1983) 146 Cal.App.3d 369, 378–379 [194 Cal.Rptr. 128].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268-276.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47[1] (Matthew Bender).

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

1503–1514. Reserved for Future Use

2100 Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury (Veh. Code, § 23153(a), (f), (g))

The defendant is charged [in Count __] with causing injury to another person while (driving a vehicle/operating a vessel) under the [combined] influence of (an alcoholic beverage/ [or] a drug/ [or] an alcoholic beverage and a drug) [in violation of Vehicle Code section 23153(a)/(f)/(g)].

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

1. **The defendant (drove a vehicle/operated a vessel);**

2. **When (he/she) (drove a vehicle/operated a vessel), the defendant was under the [combined] influence of (an alcoholic beverage/ [or] a drug/ [or] an alcoholic beverage and a drug);**

3. **While (driving a vehicle/operating a vessel) under the influence, the defendant also (committed an illegal act/ [or] neglected to perform a legal duty);**

AND

4. **The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.**

A person is *under the influence* if, as a result of (drinking [or consuming] an alcoholic beverage/ [and/or] taking a drug), his or her mental or physical abilities are so impaired that he or she is no longer able to (drive a vehicle/operate a vessel) with the caution of a sober person, using ordinary care, under similar circumstances.

[An *alcoholic beverage* is a liquid or solid material intended to be consumed that contains ethanol. Ethanol is also known as ethyl alcohol, drinking alcohol, or alcohol. [An *alcoholic beverage* includes _____ *<insert type[s] of beverage[s] from Veh. Code, § 109 or Bus. & Prof. Code, § 23004, e.g., wine, beer>*.**]]**

[A *drug* is a substance or combination of substances, other than alcohol, that could so affect the nervous system, brain, or muscles of a person that it would appreciably impair his or her ability to (drive a vehicle/operate a vessel) as an ordinarily cautious person, in full possession of his or her faculties and using

reasonable care, would (drive a vehicle/operate a vessel) under similar circumstances.]

[If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent or more at the time of the chemical analysis, you may, but are not required to, conclude that the defendant was under the influence of an alcoholic beverage at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Public Health.

[The People allege that the defendant committed the following illegal act[s]: _____ *<list name[s] of offense[s]>***.**

To decide whether the defendant committed _____*<list name[s] of offense[s]>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]**

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while (driving the vehicle/operating the vessel): (the duty to exercise ordinary care at all times and to maintain proper control of the (vehicle/vessel)/_____ *<insert other duty or duties alleged>***).]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>
[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>
[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

[An act causes bodily injury to another person if the injury is the direct, natural, and probable consequence of the act and the injury would not have happened without the act. A *natural and probable consequence* is one that a

reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

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

[It is not a defense that the defendant was legally entitled to use the drug.]

[If the defendant was under the influence of (an alcoholic beverage/ [and/or] a drug), then it is not a defense that something else also impaired (his/her) ability to (drive a vehicle/operate a vessel).]

New January 2006; Revised June 2007, April 2008, December 2008, August 2015, September 2017, March 2018, September 2019

BENCH NOTES

Instructional Duty

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

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra,* 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of "ordinary care."

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the "direct, natural, and probable" language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the "substantial factor" definition. (See *People v. Autry* (1995) 37

Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent" explains a rebuttable presumption created by statute. (See Veh. Code, § 23610; Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent" if there is no substantial evidence that the defendant's blood alcohol level was at or above 0.08 percent at the time of the test. In addition, if the test falls within the range in which no presumption applies, 0.05 percent to just below 0.08 percent, do not give this bracketed sentence. (*People v. Wood* (1989) 207 Cal.App.3d Supp. 11, 15 [255 Cal.Rptr. 537].) The court should also consider whether there is sufficient evidence to establish that the test result exceeds the margin of error before giving this instruction for test results of 0.08 percent. (Compare *People v. Campos* (1982) 138 Cal.App.3d Supp. 1, 4–5 [188 Cal.Rptr. 366], with *People v. Randolph* (1989) 213 Cal.App.3d Supp. 1, 11 [262 Cal.Rptr. 378].)

The statute also creates a rebuttable presumption that the defendant was not under the influence if his or her blood alcohol level was less than 0.05 percent. (*People v. Gallardo* (1994) 22 Cal.App.4th 489, 496 [27 Cal.Rptr.2d 502].) Depending on the facts of the case, the defendant may be entitled to a pinpoint instruction on this presumption. It is not error to refuse an instruction on this presumption if the prosecution's theory is that the defendant was under the combined influence of drugs and alcohol. (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1250 [32 Cal.Rptr.2d 442].)

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with "In evaluating any test results in this case." (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Give the bracketed sentence stating that "it is not a defense that something else also impaired (his/her) ability to drive" if there is evidence of an additional source of impairment such as an epileptic seizure, inattention, or falling asleep.

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra,* 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125*, Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

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

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the "imminent peril/sudden emergency" doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

Related Instructions

CALCRIM No. 2101, *Driving With 0.08 Percent Blood Alcohol Causing Injury*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements. ▸ Veh. Code, § 23153(a), (f), (g); *People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641].
- Alcoholic Beverage Defined. ▸ Veh. Code, § 109, Bus. & Prof. Code, § 23004.
- Drug Defined. ▸ Veh. Code, § 312.
- Presumptions. ▸ Veh. Code, § 23610; Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Under the Influence Defined. ▸ *People v. Schoonover* (1970) 5 Cal.App.3d 101, 105–107 [85 Cal.Rptr. 69]; *People v. Enriquez* (1996) 42 Cal.App.4th 661, 665–666 [49 Cal.Rptr.2d 710].
- Must Instruct on Elements of Predicate Offense. ▸ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care. ▸ Pen. Code, § 7, subd. 2; Restatement Second of Torts, § 282; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243] [ordinary negligence standard applies to driving under the influence causing injury].
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Legal Entitlement to Use Drug Not a Defense. ▸ Veh. Code, § 23630.
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].
- Prior Convictions. ▸ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

LESSER INCLUDED OFFENSES

- Misdemeanor Driving Under the Influence or With 0.08 Percent. ▸ Veh. Code, § 23152(a) & (b); *People v. Capetillo* (1990) 220 Cal.App.3d 211, 220 [269 Cal.Rptr. 250].

- Driving Under the Influence Causing Injury is not a lesser included offense of vehicular manslaughter without gross negligence. ▸ *People v. Binkerd* (2007) 155 Cal.App.4th 1143, 1148–1149 [66 Cal.Rptr.3d 675].

- Violations of Vehicle Code section 23153(a), are not lesser included offenses of Vehicle Code section 23153(f) [now 23153(g)]. ▸ *People v. Cady* (2016) 7 Cal.App.5th 134, 145-146 [212 Cal.Rptr.3d 319].

RELATED ISSUES

DUI Cannot Serve as Predicate Unlawful Act

"[T]he evidence must show an unlawful act or neglect of duty *in addition* to driving under the influence." (*People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641] [italics in original]; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 668 [219 Cal.Rptr. 243].)

Act Forbidden by Law

The term " 'any act forbidden by law' . . . refers to acts forbidden by the Vehicle Code . . . ." (*People v. Clenney* (1958) 165 Cal.App.2d 241, 253 [331 P.2d 696].) The defendant must commit the act when driving the vehicle. (*People v. Capetillo* (1990) 220 Cal.App.3d 211, 217 [269 Cal.Rptr. 250] [violation of Veh. Code, § 10851 not sufficient because offense not committed "when" defendant was driving the vehicle but by mere fact that defendant was driving the vehicle].)

Neglect of Duty Imposed by Law

"In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of [the Vehicle Code] was violated." (Veh. Code, § 23153(c); *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243].) "[The] neglect of duty element . . . is satisfied by evidence which establishes that the defendant's conduct amounts to no more than ordinary negligence." (*People v. Oyaas, supra,* 173 Cal.App.3d at p. 669.) "[T]he law imposes on any driver [the duty] to exercise ordinary care at all times and to maintain a proper control of his or her vehicle." (*Id.* at p. 670.)

Multiple Victims to One Drunk Driving Accident

"In *Wilkoff v. Superior Court* [(1985) 38 Cal.3d 345, 352 [211 Cal.Rptr. 742, 696 P.2d 134]] we held that a defendant cannot be charged with multiple counts of felony drunk driving under Vehicle Code section 23153, subdivision (a), where injuries to several people result from one act of drunk driving." (*People v. McFarland* (1989) 47 Cal.3d 798, 802 [254 Cal.Rptr. 331, 765 P.2d 493].) However, when "a defendant commits vehicular manslaughter with gross negligence[,] . . . he may properly be punished for [both the vehicular manslaughter and] injury to a separate individual that results from the same incident." (*Id.* at p. 804.) The prosecution may also charge an enhancement for multiple victims under Vehicle Code section 23558.

See also the Related Issues section in CALCRIM No. 2110, *Driving Under the Influence*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 272-277.

2 Witkin, California Evidence (5th ed. 2012) Demonstrative, Experimental, and Scientific Evidence § 56.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.36 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

2101 Driving With 0.08 Percent Blood Alcohol Causing Injury (Veh. Code, § 23153(b))

The defendant is charged [in Count __] with causing injury to another person while driving with a blood alcohol level of 0.08 percent or more [in violation of Vehicle Code section 23153(b)].

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

1. **The defendant drove a vehicle;**

2. **When (he/she) drove, the defendant's blood alcohol level was 0.08 percent or more by weight;**

3. **When the defendant was driving with that blood alcohol level, (he/she) also (committed an illegal act/ [or] neglected to perform a legal duty);**

AND

4. **The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.**

[If the People have proved beyond a reasonable doubt that a sample of the defendant's (blood/breath) was taken within three hours of the defendant's [alleged] driving and that a chemical analysis of the sample showed a blood alcohol level of 0.08 percent or more, you may, but are not required to, conclude that the defendant's blood alcohol level was 0.08 percent or more at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Public Health.]

[The People allege that the defendant committed the following illegal act[s]: _____ *<list name[s] of offense[s]>*

To decide whether the defendant committed _____*<list name[s] of offense[s]>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]**

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while driving the vehicle: (the duty to exercise ordinary care at all times and to maintain proper control of the vehicle/_____ *<insert other duty or duties alleged>***).]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>
[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>
[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

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

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

New January 2006; Revised August 2006, April 2008, August 2015, March 2018, September 2019

BENCH NOTES

Instructional Duty

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

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra,* 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyass* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of "ordinary care."

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the "direct, natural, and probable" language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the "substantial factor" definition. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that a sample of" explains a rebuttable presumption created by statute. (See Veh. Code, § 23152(b); Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that a sample of" if there is no substantial evidence that the defendant's blood alcohol level was ~~below~~ at or above 0.08 percent at the time of the test.

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with "In evaluating any test results in this case." (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra,* 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal. Rptr. 2d 690].)

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

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the "imminent peril/sudden emergency" doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

Related Instructions
CALCRIM No. 2100, *Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury.*

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements. ▸ Veh. Code, § 23153(b); *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 265–266 [198 Cal.Rptr. 145, 673 P.2d 732].
- Partition Ratio. ▸ Veh. Code, § 23152(b); *People v. Bransford* (1994) 8 Cal.4th 885, 890 [35 Cal.Rptr.2d 613, 884 P.2d 70].
- Presumptions. ▸ Veh. Code, § 23153(b); Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Must Instruct on Elements of Predicate Offense. ▸ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care. ▸ Pen. Code, § 7(2); Restatement Second of Torts, § 282.
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].

- Statute Constitutional. ‣ *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 273 [198 Cal.Rptr. 145, 673 P.2d 732].
- Prior Convictions. ‣ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

LESSER INCLUDED OFFENSES

- Misdemeanor Driving Under the Influence or With 0.08 Percent. ‣ Veh. Code, § 23152(a) & (b); *People v. Capetillo* (1990) 220 Cal.App.3d 211, 220 [269 Cal.Rptr. 250].

RELATED ISSUES

See the Related Issues section in CALCRIM No. 2111, *Driving With 0.08 Percent Blood Alcohol* and CALCRIM No. 2100, *Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 272-277.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.36 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses,* § 145.02[1] (Matthew Bender).

2102 Driving With 0.04 Percent Blood Alcohol Causing Injury With a Passenger for Hire (Veh. Code, § 23153(e))

The defendant is charged [in Count __] with causing injury to another person while driving with a blood-alcohol level of 0.04 percent or more [in violation of Vehicle Code section 23153(e)].

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

1. **The defendant drove a vehicle;**

2. **When (he/she) drove, the defendant's blood-alcohol level was 0.04 percent or more by weight;**

3. **When (he/she) drove with that blood-alcohol level, (he/she) also (committed an illegal act/ [or] neglected to perform a legal duty);**

4. **When (he/she) drove, there was a passenger for hire in the vehicle;**

AND

5. **The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.**

A person is a *passenger for hire* when the person or someone else pays, or is expected to pay, for the ride, the payment is or will be with money or something else of value, and the payment is made to, or expected to be made to, the owner, operator, agent or any other person with an interest in the vehicle.

[If the People have proved beyond a reasonable doubt that a sample of the defendant's (blood/breath) was taken within three hours of the defendant's [alleged] driving and that a chemical analysis of the sample showed a blood-alcohol level of 0.04 percent or more, you may, but are not required to, conclude that the defendant's blood-alcohol level was 0.04 percent or more at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Public Health.]

[The People allege that the defendant committed the following illegal act[s]: _____ *<list name[s] of offense[s]>***.**

To decide whether the defendant committed _____*<list name[s] of offense[s]>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]**

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while driving the vehicle: (the duty to exercise ordinary care at all times and to maintain proper control of the vehicle/_____ *<insert other duty or duties alleged>***).]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>
[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>
[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

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

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

New March 2018, effective July 2018; Revised September 2019

BENCH NOTES

Instructional Duty

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

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra,* 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyass* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of "ordinary care."

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the "direct, natural, and probable" language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the "substantial factor" definition. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity

instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that a sample of" explains a rebuttable presumption created by statute. (See Veh. Code, § 23153(e); Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that a sample of" if there is no substantial evidence that the defendant's blood-alcohol level was ~~below~~ at or above 0.04 percent at the time of the test.

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with "In evaluating any test results in this case." (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Do **not** give this instruction if the court has bifurcated the trial. Instead, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. See the Bench Notes to CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, for an extensive discussion of bifurcation. If the court does not grant a bifurcated trial, give CALCRIM No. 2110, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*

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

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the "imminent peril/sudden emergency" doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

Related Instructions
CALCRIM No. 2100, *Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury.*

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements. ▸ Veh. Code, § 23153(e); *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 265–266 [198 Cal.Rptr. 145, 673 P.2d 732].
- Partition Ratio. ▸ Veh. Code, § 23152; *People v. Bransford* (1994) 8 Cal.4th 885, 890 [35 Cal.Rptr.2d 613, 884 P.2d 70].
- Presumptions. ▸ Veh. Code, § 23153(e); Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Must Instruct on Elements of Predicate Offense. ▸ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care. ▸ Pen. Code, § 7(2); Restatement Second of Torts, § 282.
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].
- Statute Constitutional. ▸ *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 273 [198 Cal.Rptr. 145, 673 P.2d 732].
- Prior Convictions. ▸ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

LESSER INCLUDED OFFENSES

- Driving With 0.04 Percent Blood Alcohol With a Passenger for Hire. ▸ Veh. Code, § 23152(e).

RELATED ISSUES

See the Related Issues section in CALCRIM No. 2111, *Driving With 0.08 Percent Blood Alcohol* and CALCRIM No. 2100, *Driving Under the Influence*.

2306. Possession of Controlled Substance with Intent to Commit Sexual Assault (Health & Saf. Code, §§ 11350.5, 11377.5)

The defendant is charged [in Count ___] with possession of _____ *<insert type of controlled substance from sections 11056(c)(11), (g), 11054(e)(3); or 11057(d)(13) of the Health and Safety Code>***, a controlled substance, with intent to commit _____** *<insert description of alleged target crime or crimes from sections 243.4, 261, 262, 286, 287~~8a~~, or 289 of the Penal Code>***, [in violation of Health and Safety Code section[s] (11350.5[,]/ [and/or] 11377.5)].**

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

1. **The defendant possessed a controlled substance;**

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

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

4. **When the defendant possessed the controlled substance, (he/she) intended to use it to commit _____** *<insert description of alleged target crime or crimes from sections 243.4, 261, 262, 286, 287~~8a~~, or 289 of the Penal Code>***;**

5. **The controlled substance was _____ <***insert type of controlled substance***>;**

6. **The controlled substance was in a usable amount.**

[A *usable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.]

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]

[Two or more people may possess something at the same time.]

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

New September 2017

BENCH NOTES

Instructional Duty

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

The court must also give the appropriate instructions on the target sexual offense or offenses in element 4.

AUTHORITY

- Elements ▸ Health & Saf. Code, §§ 11350.5, 11377.5.
- Prohibited Controlled Substances ▸ Health & Saf. Code, §§ 11054(e)(3), 11056(c)(11) or (g); 11057(d)(13).
- Constructive vs. Actual Possession ▸ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Knowledge ▸ *People v. Horn* (1960) 187 Cal.App.2d 68, 74–75 [9 Cal.Rptr. 578].
- Usable Amount ▸ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 105, 106.

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 1-69.

2503. Possession of Deadly Weapon With Intent to Assault (Pen. Code, § 17500)

The defendant is charged [in Count __] with possessing a deadly weapon with intent to assault [in violation of Penal Code section 17500].

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

1. **The defendant possessed a deadly weapon on (his/her) person;**

2. **The defendant knew that (he/she) possessed the weapon;**

AND

3. **At the time the defendant possessed the weapon, (he/she) intended to assault someone.**

A person intends to assault someone else if he or she intends to do an act that by its nature would directly and probably result in the application of force to a person.

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

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

[The term *deadly weapon* is defined in another instruction to which you should refer.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] and any other evidence that indicates that the object would be used for a dangerous, rather than a harmless, purpose.]

The term *application of force* means to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

[The People allege that the defendant possessed the following weapons: _____ <*insert description of each weapon when multiple items alleged*>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these weapons and you all agree on which weapon (he/she) possessed.]

New January 2006; Revised February 2012, February 2013, September 2019

BENCH NOTES

Instructional Duty

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

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was "fragmented as to time [or] space," the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].) Give the bracketed paragraph that begins with "The People allege that the defendant possessed the following weapons," inserting the items alleged.

Give the definition of deadly weapon unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed paragraph that begins with "In deciding whether" if the object is not a weapon as a matter of law ~~but~~ and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Defenses—Instructional Duty

Evidence of voluntary intoxication or mental impairment may be admitted to show that the defendant did not form the required mental state. (See *People v. Ricardi* (1992) 9 Cal.App.4th 1427, 1432 [12 Cal.Rptr.2d 364].) The court has no sua sponte duty to instruct on these defenses; however, the trial court must give these instructions on request if supported by the evidence. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119 [2 Cal.Rptr.2d 364, 820 P.2d 588] [on duty to instruct generally]; *People v. Stevenson* (1978) 79 Cal.App.3d 976, 988 [145 Cal.Rptr. 301] [instructions applicable to possession of weapon with intent to assault].) See Defenses and Insanity, CALCRIM No. 3400 et seq.

AUTHORITY

- Elements ▸ Pen. Code, § 17500.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Knowledge Required ▸ See *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. Gaitan* (2001) 92 Cal.App.4th 540, 547 [111 Cal.Rptr.2d 885].
- Assault ▸ Pen. Code, § 240; see also *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 140.

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

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01[1] (Matthew Bender).

2572. Possession of Explosive or Destructive Device in Specified Place (Pen. Code, § 18715)

The defendant is charged [in Count __] with recklessly or maliciously possessing (an explosive/ [or] a destructive device) (in[,]/ on[,]/ [or] near) _____ *<insert type of place alleged from Pen. Code, § 18715>* **[in violation of Penal Code section 18715].**

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

1. **The defendant recklessly or maliciously possessed (an explosive/ [or] a destructive device);**

AND

2. **At the time the defendant possessed the (substance/ [or] device), (he/she) was**

<2A.>
[on a public street or highway](;[or]/.)

<2B.>
[in or near a (theater[,]/ hall[,]/ school[,]/ college[,]/ church[,]/ hotel[,]/ [or] other public building/ [or] private habitation](;[or]/.)

<2C.>
[in, on, or near a (plane[,]/ passenger train[,]/ car[,]/ cable road or cable car[,]/ boat carrying paying passengers)](; or/.)

<2D.>
[in, on, or near another public place ordinarily passed by human beings].

A person acts *recklessly* when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk, (2) he or she ignores that risk, and (3) the person's behavior is grossly different from what a reasonable person would have done in the same situation.

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

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is also any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **is an *explosive*.]**

[A *destructive device* is _____ *<insert definition from Pen. Code, § 16460>*.**]**

[_____ *<insert type of destructive device from Pen. Code, § 16460>* **is a *destructive device*.]**

[The term[s] (*explosive/* [and] *destructive device*) (is/are) defined in another instruction.]

[The People do not need to prove that the (explosive/ [or] destructive device) was set to explode.]

[Two or more people may possess something at the same time.]

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

[The People allege that the defendant possessed the following (explosive[s]/ [or] destructive device[s]): _____ *<insert description of each explosive or destructive device when multiple items alleged>*. **You may not find the defendant guilty unless all of you agree that the People have proved that the defendant possessed at least one of the alleged items and you all agree on which alleged item (he/she) possessed.]**

New January 2006; Revised February 2012, September 2019

BENCH NOTES

Instructional Duty

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

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (*People v. Heideman* (1976) 58 Cal.App.3d 321, 333 [130 Cal.Rptr. 349].) Give the bracketed paragraph that begins, "The People allege that the defendant possessed the following," inserting the items alleged. The jury does not have to be unanimous about whether the defendant acted recklessly or maliciously. *(Ibid.)* The jury also does not have to agree on whether the item was an explosive or a destructive device. (*People v. Westoby* (1976) 63 Cal.App.3d 790, 797 [134 Cal.Rptr. 97]; see also *People v. Quinn*, (1976) 57 Cal.App.3d 251, 257 [129 Cal.Rptr. 139] [a bomb may be an explosive and may be a destructive device].)

Depending on the device or substance used, give the bracketed definitions of "explosive" or "destructive device," inserting the appropriate definition from Penal Code section 16460, unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere. If the case involves a specific device listed in Health and Safety Code section 12000 or Penal Code section 16460, the court may instead give the bracketed sentence stating that the listed item "is an explosive" or "is a destructive device." For example, "A grenade is a destructive device." However, the court may not instruct the jury that the defendant used a destructive device. For example, the court may not state that "the defendant used a destructive device, a grenade," or "the device used by the defendant, a grenade, was a destructive device." (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 25–26 [39 Cal.Rptr.2d 257].)

If the device used is a bomb, the court may insert the word "bomb" in the bracketed definition of destructive device without further definition. (*People v. Dimitrov, supra,* 33 Cal.App.4th at p. 25.) Appellate courts have held that the term "bomb" is not vague and is understood in its "common, accepted, and popular sense." (*People v. Quinn, supra,* 57 Cal.App.3d at p. 258; *People v. Dimitrov, supra,* 33 Cal.App.4th at p. 25.) If the court wishes to define the term "bomb," the court may use the following definition: "A bomb is a device carrying an explosive charge fused to blow up or detonate under certain conditions." (See *People v. Morse* (1992) 2 Cal.App.4th 620, 647, fn. 8 [3 Cal.Rptr.2d 343].)

AUTHORITY

- Elements ▸ Pen. Code, § 18715.
- Explosive Defined ▸ Health & Saf. Code, § 12000.
- Destructive Device Defined ▸ Pen. Code, § 16460.
- Recklessly Defined ▸ *People v. Heideman* (1976) 58 Cal.App.3d 321, 334 [130 Cal.Rptr. 349]; *In re Steven S.* (1994) 25 Cal.App.4th 598, 614–615 [31 Cal.Rptr.2d 644]; Model Pen. Code, § 2.02(2)(c).
- Maliciously Defined ▸ Pen. Code, § 7(4); *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101]; see also *People v. Heideman* (1976) 58 Cal.App.3d 321, 335 [130 Cal.Rptr. 349].
- Constructive vs. Actual Possession ▸ See *People v. Azevedo* (1984) 161 Cal.App.3d 235, 242–243 [207 Cal.Rptr. 270], questioned on other grounds in *In re Jorge M.* (2000) 23 Cal.4th 866, 876, fn. 6 [98 Cal.Rptr.2d 466, 4 P.3d 297]; *People v. Yoshimura* (1979) 91 Cal.App.3d 609, 619 [154 Cal.Rptr. 314].
- Unanimity ▸ *People v. Heideman* (1976) 58 Cal.App.3d 321, 333 [130 Cal.Rptr. 349].

LESSER INCLUDED OFFENSES

- Possession of Destructive Device ▸ Pen. Code, § 18710; *People v. Westoby* (1976) 63 Cal.App.3d 790, 795 [134 Cal.Rptr. 97].
- Possession of Explosive ▸ Health & Saf. Code, § 12305; *People v. Westoby* (1976) 63 Cal.App.3d 790, 795 [134 Cal.Rptr. 97].

RELATED ISSUES

Need Not Be Set to Explode

"One need not possess a destructive device already set to explode in order to violate [now-repealed] Penal Code section 12303.2." (*People v. Westoby* (1976) 63 Cal.App.3d 790, 795 [134 Cal.Rptr. 97].) Thus, the defendant in *Westoby* was guilty of possessing a destructive device even though the battery wires were not connected on the pipe bomb. *(Ibid.)* Similarly, in *People v. Heideman* (1976) 58 Cal.App.3d 321, 335–336 [130 Cal.Rptr. 349], the defendant was guilty of illegally possessing dynamite even though he did not have the blasting caps necessary to ignite the dynamite. (See also *People v. Morse* (1992) 2 Cal.App.4th 620, 646–647 [3 Cal.Rptr.2d 343] [instruction on this point proper].)

~~***Felony Murder***~~

~~Penal Code section 18715 is an inherently dangerous felony supporting a conviction for second degree felony murder. (*People v. Morse* (1992) 2~~

~~Cal.App.4th 620, 646 [3 Cal.Rptr.2d 343].) However, in *People v. Morse*, the trial court erred in instructing that if the jury convicted the defendant of second degree murder on the basis of felony murder, the murder was then elevated to first degree murder based on the use of a destructive device. (*Id.* at pp. 654-655.)~~

Multiple Charges Based on Multiple Explosives or Destructive Devices
The defendant may be charged with multiple counts of violating Penal Code section 18715 based on possession of multiple explosives or destructive devices. (*People v. DeGuzman* (2003) 113 Cal.App.4th 538, 548 [6 Cal.Rptr.3d 739].)

Maliciously—People v. Heideman
In *People v. Heideman* (1976) 58 Cal.App.3d 321 [130 Cal.Rptr. 349], the defendant offered to commit murder for hire using explosives and possessed the explosives. (*Id.* at pp. 327–329.) The defendant asserted that he did not actually intend to physically injure anyone but simply to defraud the individuals offering to pay for the murders. (*Id.* at pp. 330–331.) On appeal, the defendant contended that the court had improperly instructed on the meaning of "recklessness," which the prosecution conceded. (*Id.* at p. 334.) Noting that the "[d]efendant admitted that his purpose in storing the dynamite in his room was to carry out a nefarious scheme to defraud his victims," the court found sufficient evidence to establish malice. (*Id.* at p. 335.) The court stated that under the facts of the case before it, the term "maliciously" did not "require an actual intent to physically injure, intimidate or terrify others." *(Ibid.)* Accordingly, the court found that the error in the instruction on "recklessness" was harmless given that there was sufficient evidence to support the higher culpability standard of malice. *(Ibid.)* The committee did not incorporated the language from *Heideman* in the definition of "maliciously" in this instruction because the committee concluded that this case reflects unique facts and that the language quoted is dicta, not essential to the ruling of the case.

See the Related Issues section to CALCRIM No. 2571, *Carrying or Placing Explosive or Destructive Device on Common Carrier*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 168–169.

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

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order,* § 144.01[1][c] (Matthew Bender).

2651. Trying to Prevent an Executive Officer From Performing Duty (Pen. Code, § 69)

The defendant is charged [in Count __] with trying to (prevent/ [or] deter) an executive officer from performing that officer's duty [in violation of Penal Code section 69].

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

1. **The defendant willfully and unlawfully used (violence/ [or] a threat of violence) to try to (prevent/ [or] deter) an executive officer from performing the officer's lawful duty;**

~~**AND**~~

2. **When the defendant acted, (he/she) intended to (prevent/ [or] deter) the executive officer from performing the officer's lawful duty;**

AND

3. **When the defendant acted, (he/she) knew that the person was an executive officer.**

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

An *executive officer* is a government official who may use his or her own discretion in performing his or her job duties. [(A/An) _____ *<insert title, e.g., peace officer, commissioner, etc.>* **is an *executive officer.*]**

The executive officer does not need to be performing his or her job duties at the time the threat is communicated.

A threat may be oral or written and may be implied by a pattern of conduct or a combination of statements and conduct.

[Photographing or recording an *executive officer* while the officer is in a public place or while the person photographing or recording is in a place where he or she has the right to be is not, by itself, a crime.]

[The defendant does not have to communicate the threat directly to the intended victim, but may do so through someone else. The defendant must, however, intend that (his/her) statement be taken as a threat by the intended victim.]

[Someone who intends that a statement be understood as a threat does not have to actually intend to carry out the threatened act [or intend to have someone else do so].]

[A sworn member of _____ *<insert name of agency that employs peace officer>***, authorized by** _____ *<insert appropriate section from Pen. Code, § 830 et seq.>* **to** _____ *<describe statutory authority>***, is a *peace officer*.]**

[The duties of (a/an) _____ *<insert title of officer specified in Pen. Code, § 830 et seq.>* **include** _____ *<insert job duties>***.]**

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>
[A peace officer is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

New January 2006; Revised August 2014, August 2016, September 2019

BENCH NOTES

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

In order to be "performing a lawful duty," an executive officer, including a peace officer, must be acting lawfully. (*In re Manuel G.* (1997) 16 Cal.4th 805, 816–817 [66 Cal.Rptr.2d 701, 941 P.2d 880]; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) The court has a **sua sponte** duty to instruct on lawful performance and the defendant's reliance on self-defense as it relates to the use of excessive force when this is an issue in the case. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651]; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663]; *People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].)

For this offense, "the relevant factor is simply the lawfulness of the official conduct that the defendant (through threat or violence) has attempted to deter, and

not the lawfulness (or official nature) of the conduct in which the officer is engaged at the time the threat is made." (*In re Manuel G., supra,* 16 Cal.4th at p. 817.) Thus, if the evidence supports the conclusion that the defendant attempted to deter the officer's current performance of a duty, the court should instruct on the lawfulness of that duty. *(Ibid.)* Where the evidences supports the conclusion that the defendant attempted to deter the officer from performing a duty in the future, the court should only instruct on the lawfulness of that future duty. *(Ibid.)*

If there is an issue in the case as to the lawful performance of a duty by a peace officer, give the last bracketed paragraph and CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

If a different executive officer was the alleged victim, the court will need to draft an appropriate definition of lawful duty if this is an issue in the case.

AUTHORITY

- Elements. ▸ Pen. Code, § 69; ~~-~~ *People v. Atkins* (2019) 31 Cal.App.5th 963, 979 [243 Cal.Rptr.3d 283] [statute requires actual knowledge that person was an executive officer].
- Specific Intent Required. ▸ *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1154 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Immediate Ability to Carry Out Threat Not Required. ▸ *People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388].
- Lawful Performance Element to Attempting to Deter. ▸ *In re Manuel G.* (1997) 16 Cal.4th 805, 816–817 [66 Cal.Rptr.2d 701, 941 P.2d 880].
- Statute Constitutional. ▸ *People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388].
- Merely Photographing or Recording Officers Not a Crime ▸ Pen. Code, § 69(b).

RELATED ISSUES

Resisting an Officer Not Lesser Included Offense
Resisting an officer, Penal Code section 148(a), is not a lesser included offense of attempting by force or violence to deter an officer. (*People v. Smith* (2013) 57 Cal.4th 232, 240-245 [159 Cal.Rptr.3d 57, 303 P.3d 368].)

Statute as Written Is Overbroad

The statute as written would prohibit lawful threatening conduct. To avoid overbreadth, this instruction requires that the defendant act both "willfully" and "unlawfully." (*People v. Superior Court (Anderson)* (1984) 151 Cal.App.3d 893, 895–896 [199 Cal.Rptr. 150].)

State of Mind of Victim Irrelevant

Unlike other threat crimes, the state of mind of the intended victim is irrelevant. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1153 [124 Cal.Rptr.2d 373, 52 P.3d 572]; *People v. Hines* (1997) 15 Cal.4th 997, 1061, fn. 15 [64 Cal.Rptr.2d 594, 938 P.2d 388].)

Immediate Ability to Carry Out Threat Not Required

"As long as the threat reasonably appears to be a serious expression of intention to inflict bodily harm and its circumstances are such that there is a reasonable tendency to produce in the victim a fear that the threat will be carried out, a statute proscribing such threats is not unconstitutional for lacking a requirement of immediacy or imminence. Thus, threats may be constitutionally prohibited even when there is no *immediate* danger that they will be carried out." (*People v. Hines* (1997) 15 Cal.4th 997, 1061 [64 Cal.Rptr.2d 594, 938 P.2d 388] [quoting *In re M.S.* (1995) 10 Cal.4th 698, 714 [42 Cal.Rptr.2d 355, 896 P.2d 1365], citation and internal quotation marks removed, emphasis in original]; see also *People v. Gudger* (1994) 29 Cal.App.4th 310, 320–321 [34 Cal.Rptr.2d 510]; *Watts v. United States* (1969) 394 U.S. 705, 707 [89 S.Ct. 1399, 22 L.Ed.2d 664]; *United States v. Kelner* (2d Cir. 1976) 534 F.2d 1020, 1027.)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2000) Crimes Against Governmental Authority, § 128.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.11A[1][b] (Matthew Bender).

2652. Resisting an Executive Officer in Performance of Duty (Pen. Code, § 69)

The defendant is charged [in Count __] with resisting an executive officer in the performance of that officer's duty [in violation of Penal Code section 69].

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

1. **The defendant [unlawfully] used force [or violence] to resist an executive officer;**

2. **When the defendant acted, the officer was performing (his/her) lawful duty;**

3. **When the defendant acted, the defendant knew that the person (he/she) resisted was an executive officer;**

AND

4. **When the defendant acted, (he/she) knew the executive officer was performing (his/her) duty.**

An *executive officer* is a government official who may use his or her own discretion in performing his or her job duties. [(A/An) _____ *<insert title, e.g., peace officer, commissioner, etc.>* **is an *executive officer.*]**

[A sworn member of _____ *<insert name of agency that employs peace officer>***, authorized by _____** *<insert appropriate section from Pen. Code, § 830 et seq.>* **to _____** *<describe statutory authority>***, is a *peace officer*.]**

[The duties of (a/an) _____ *<insert title of officer specified in Pen. Code, § 830 et seq.>* **include _____** *<insert job duties>***.]**

[Taking a photograph or making an audio or video recording of an *executive officer* while the officer is in a public place or the person taking the photograph or making the recording is in a place where he or she has the right to be is not, by itself, a crime.]

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>

[A *peace officer* is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

New January 2006; Revised August 2014, February 2015, August 2016, September 2019

BENCH NOTES

Instructional Duty

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

In order to be "performing a lawful duty," an executive officer, including a peace officer, must be acting lawfully. (*In re Manuel G.* (1997) 16 Cal.4th 805, 816 [66 Cal.Rptr.2d 701, 941 P.2d 880]; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) The court has a **sua sponte** duty to instruct on lawful performance and the defendant's reliance on self-defense as it relates to the use of excessive force when this is an issue in the case. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651]; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663]; *People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].)

If there is an issue in the case as to the lawful performance of a duty by a peace officer, give the last bracketed paragraph and CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

If a different executive officer was the alleged victim, the court will need to draft an appropriate definition of lawful duty if this is an issue in the case.

AUTHORITY

- Elements ▸ Pen. Code, § 69.
- General Intent Offense ▸ *People v. Roberts* (1982) 131 Cal.App.3d Supp. 1, 9 [182 Cal.Rptr. 757].
- Lawful Performance Element to Resisting Officer ▸ *In re Manuel G.* (1997) 16 Cal.4th 805, 816 [66 Cal.Rptr.2d 701, 941 P.2d 880].
- Merely Photographing or Recording Officers Not a Crime ▸ Pen. Code, § 69(b).

LESSER INCLUDED OFFENSES

Penal Code section 148(a) is not a lesser included offense of this crime under the statutory elements test, but may be one under the accusatory pleading test. (*People v. Smith* (2013) 57 Cal.4th 232, 241-242 [159 Cal.Rptr.3d 57, 303 P.3d 368]; see also *People v. Belmares* (2003) 106 Cal.App.4th 19, 26 [130 Cal.Rptr.2d 400] and *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1532 [29 Cal.Rptr.3d 586].

Assault may be a lesser included offense of this crime under the accusatory pleading test. See *People v. Brown* (2016) 245 Cal.App.4th 140, 153 [199 Cal.Rptr.3d 303].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 128.

1 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 11, *Arrest,* § 11.06[3] (Matthew Bender).

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.15[2] (Matthew Bender).

2720. Assault by Prisoner Serving Life Sentence (Pen. Code, § 4500)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) with malice aforethought, while serving a life sentence [in violation of Penal Code section 4500].

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

<Alternative 1A—force with weapon>

[1. The defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and the force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

5. The defendant acted with malice aforethought;

[AND]

<Alternative 6A—defendant sentenced to life term>

[6. When (he/she) acted, the defendant had been sentenced to a maximum term of life in state prison [in California](;/.)]

<Alternative 6B—defendant sentenced to life and to determinate term>

[6. When (he/she) acted, the defendant had been sentenced to both a specific term of years and a maximum term of life in state prison [in California](;/.)]

<Give element 7 when self-defense or defense of another is an issue raised by the evidence.>

[AND

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

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

[The term (*great bodily injury/deadly weapon*) is defined in another instruction.]

There are two kinds of *malice aforethought*, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for this crime.

The defendant acted with *express malice* if (he/she) unlawfully intended to kill the person assaulted.

The defendant acted with *implied malice* if:

1. **(He/She) intentionally committed an act.**

2. **The natural and probable consequences of the act were dangerous to human life.**

3. **At the time (he/she) acted, (he/she) knew (his/her) act was dangerous to human life.**

AND

4. **(He/She) deliberately acted with conscious disregard for human life.**

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act is committed. It does not require deliberation or the passage of any particular period of time.

[A person is *sentenced to a term in a state prison* if he or she is (sentenced to confinement in _____ <*insert name of institution from Pen. Code, § 5003*>/committed to the Department of Corrections and Rehabilitation[, Division of Juvenile Justice,]) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the (confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *sentenced to a term in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is *not sentenced to a term in a state prison*.]]

New January 2006; Revised February 2013, August 2016, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In element 1, give alternative 1A if it is alleged the assault was committed with a deadly weapon. Give alternative 1B if it is alleged that the assault was committed with force likely to produce great bodily injury.

In element 6, give alternative 6A if the defendant was sentenced to only a life term. Give element 6B if the defendant was sentenced to both a life term and a determinate term. (*People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836].)

Give the bracketed definition of "application of force and apply force" on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

On request, give the bracketed definition of "sentenced to a term in state prison." Within that definition, give the bracketed portion that begins with "regardless of

the purpose," or the bracketed second or third sentence, if requested and relevant based on the evidence.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

Penal Code section 4500 provides that the punishment for this offense is death or life in prison without parole, unless "the person subjected to such assault does not die within a year and a day after" the assault. If this is an issue in the case, the court should consider whether the time of death should be submitted to the jury for a specific factual determination pursuant to *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].

Defense—Instructional Duty

As with murder, the malice required for this crime may be negated by evidence of heat of passion or imperfect self-defense. (*People v. St. Martin* (1970) 1 Cal.3d 524, 530–531 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447, P.2d 106].) If the evidences raises an issue about one or both of these potential defenses, the court has a **sua sponte** duty to give the appropriate instructions, CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion–Lesser Included Offense*, or CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense–Lesser Included Offense*. The court must modify these instructions for the charge of assault by a life prisoner.

Related Instructions

CALCRIM No. 875, *Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury*.

CALCRIM No. 520, *Murder With Malice Aforethought*.

AUTHORITY

- Elements of Assault by Life Prisoner ▸ Pen. Code, § 4500.
- Elements of Assault With Deadly Weapon or Force Likely ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).
- Willful Defined ▸ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Malice Equivalent to Malice in Murder ▸ *People v. St. Martin* (1970) 1 Cal.3d 524, 536–537 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447 P.2d 106].
- Malice Defined ▸ Pen. Code, § 188; *People v. Dellinger* (1989) 49 Cal.3d 1212, 1217–1222 [264 Cal.Rptr. 841, 783 P.2d 200]; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 103–105 [13 Cal.Rptr.2d 864, 840 P.2d 969].
- Ill Will Not Required for Malice ▸ *People v. Sedeno* (1974) 10 Cal.3d 703, 722 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1].
- Undergoing Sentence of Life ▸ *People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury—Not a Prisoner ▸ Pen. Code, § 245; see *People v. St. Martin* (1970) 1 Cal.3d 524, 536 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].
- Assault ▸ Pen. Code, § 240; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].

Note: In *People v. Noah* (1971) 5 Cal.3d 469, 476–477 [96 Cal.Rptr. 441, 487 P.2d 1009], the court held that assault by a prisoner not serving a life sentence, Penal Code section 4501, is not a lesser included offense of assault by a prisoner serving a life sentence, Penal Code section 4500. The court based its on conclusion on the fact that Penal Code section 4501 includes as an element of the offense that the prisoner was not serving a life sentence. However, Penal Code section 4501 was amended, effective January 1, 2005, to remove this element. The trial court should, therefore, consider whether Penal Code section 4501 is now a lesser included offense to Penal Code section 4500.

RELATED ISSUES

Status as Life Prisoner Determined on Day of Alleged Assault
Whether the defendant is sentenced to a life term is determined by his or her status on the day of the assault. (*People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836]; *Graham v. Superior Court* (1979) 98 Cal.App.3d 880, 890 [160 Cal.Rptr. 10].) It does not matter if the conviction is later overturned or the sentence is later reduced to something less than life. (*People v. Superior Court of Monterey (Bell), supra,* 99 Cal.App.4th at p. 1341; *Graham v. Superior Court, supra,* 98 Cal.App.3d at p. 890.)

Undergoing Sentence of Life
This statute applies to "[e]very person undergoing a life sentence . . . ." (Pen. Code, § 4500.) In *People v. Superior Court of Monterey (Bell)* (2002) 99 Cal.App.4th 1334, 1341 [121 Cal.Rptr.2d 836], the defendant had been sentenced both to life in prison and to a determinate term and, at the time of the assault, was still technically serving the determinate term. The court held that he was still subject to prosecution under this statute, stating "a prisoner who commits an assault is subject to prosecution under section 4500 for the crime of assault by a life prisoner if, on the day of the assault, the prisoner was serving a sentence which potentially subjected him to actual life imprisonment, and therefore the prisoner might believe he had 'nothing left to lose' by committing the assault." *(Ibid.)*

Error to Instruct on General Definition of Malice and General Intent
"Malice," as used in Penal Code section 4500, has the same meaning as in the context of murder. (*People v. St. Martin* (1970) 1 Cal.3d 524, 536–537 [83 Cal.Rptr. 166, 463 P.2d 390]; *People v. Chacon* (1968) 69 Cal.2d 765, 780–781 [73 Cal.Rptr. 10, 447 P.2d 106].) Thus, it is error to give the general definition of malice found in Penal Code section 7, subdivision 4. (*People v. Jeter* (2005) 125 Cal.App.4th 1212, 1217 [23 Cal.Rptr.3d 402].) It is also error to instruct that Penal Code section 4500 is a general intent crime. *(Ibid.)*

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 58–60.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.11[3] (Matthew Bender).

2721. Assault by Prisoner (Pen. Code, § 4501)

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon) while serving a state prison sentence [in violation of Penal Code section 4501].

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

<Alternative 1A—force with weapon>

[1. The defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;]

<Alternative 1B—force without weapon>

[1. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and the force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;

3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon) to a person;

[AND]

5. When (he/she) acted, the defendant was confined in a [California] state prison(;/.)

<Give element 6 when self-defense or defense of another is an issue raised by the evidence.>

[AND

6. The defendant did not act (in self-defense/ [or] in defense of someone else).]

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

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or dangerous or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

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

[The term (*great bodily injury/deadly weapon*) is defined in another instruction.]

A person is *confined in a state prison* if he or she is (confined in _____ *<insert name of institution from Pen. Code, § 5003>*/**committed to the Department of Corrections and Rehabilitation[, Division of Juvenile Justice,]) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the**

(confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *confined in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is not *confined in a state prison*.]

New January 2006; Revised August 2016, September 2019

BENCH NOTES

Instructional Duty

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

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 6 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In element 1, give alternative 1A if it is alleged the assault was committed with a deadly weapon. Give alternative 1B if it is alleged that the assault was committed with force likely to produce great bodily injury.

Give the bracketed definition of "application of force and apply force" on request.

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

In the definition of "serving a sentence in a state prison," give the bracketed portion that begins with "regardless of the purpose," or the bracketed second or third sentence, if requested and relevant based on the evidence.

Do not give an attempt instruction in conjunction with this instruction. There is no crime of "attempted assault" in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

Related Instructions
CALCRIM No. 875, *Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury*.

AUTHORITY

- Elements of Assault by Prisoner ▸ Pen. Code, § 4501.
- Elements of Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury ▸ Pen. Code, §§ 240, 245(a)(1)–(3) & (b).

- Willful Defined ▸ Pen. Code, § 7 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Least Touching ▸ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Confined in State Prison Defined ▸ Pen. Code, § 4504.
- Underlying Conviction Need Not Be Valid ▸ *Wells v. California* (9th Cir. 1965) 352 F.2d 439, 442.
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury—Not a Prisoner ▸ Pen. Code, § 245; see *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].

- Assault ▸ Pen. Code, § 240; *People v. Noah* (1971) 5 Cal.3d 469, 478–479 [96 Cal.Rptr. 441, 487 P.2d 1009].

RELATED ISSUES

Not Serving a Life Sentence

Previously, this statute did not apply to an inmate "undergoing a life sentence." (See *People v. Noah* (1971) 5 Cal.3d 469, 477 [96 Cal.Rptr. 441, 487 P.2d 1009].) The statute has been amended to remove this restriction, effective January 1, 2005. If the case predates this amendment, the court must add to the end of element 5, "for a term other than life."

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 61, 63.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* § 142.11[3] (Matthew Bender).

2900 Vandalism (Pen. Code, § 594)

The defendant is charged [in Count __] with vandalism [in violation of Penal Code section 594].

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

1. **The defendant maliciously (defaced with graffiti or with other inscribed material[,]/ [or] damaged[,]/ [or] destroyed) (real/ [or] personal) property;**

[AND]

2. **The defendant (did not own the property/owned the property with someone else)(;/.)**

<See Bench Notes regarding when to give element 3.>
[AND

3. **The amount of damage caused by the vandalism was $400 or more.]**

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

***Graffiti or other inscribed material* includes an unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.**

New January 2006; Revised June 2007, February 2013, August 2013, September 2019

BENCH NOTES

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

If the defendant is charged with a felony for causing $400 or more in damage and the court is *not* instructing on the misdemeanor offense, give element 3. If the

court *is* instructing on both the felony and the misdemeanor offenses, give CALCRIM No. 2901, *Vandalism: Amount of Damage*, with this instruction. (Pen. Code, § 594(b)(1).) The court should also give CALCRIM No. 2901 if the defendant is charged with causing more than $10,000 in damage under Penal Code section 594(b)(1).

In element 2, give the alternative language "owned the property with someone else" if there is evidence that the property was owned by the defendant jointly with someone else. (*People v. Wallace* (2004) 123 Cal.App.4th 144, 150–151 [19 Cal.Rptr.3d 790]; *People v. Kahanic* (1987) 196 Cal.App.3d 461, 466 [241 Cal.Rptr. 722] [Pen. Code, § 594 includes damage by spouse to spousal community property].)

AUTHORITY

- Elements. ▸ Pen. Code, § 594.
- Malicious Defined. ▸ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- Damage to Jointly Owned Property. ▸ *People v. Wallace* (2004) 123 Cal.App.4th 144, 150–151 [19 Cal.Rptr.3d 790]; *People v. Kahanic* (1987) 196 Cal.App.3d 461, 466 [241 Cal.Rptr. 722].
- Wrongful Act Need Not Be Directed at Victim. ▸ *People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1282 [139 Cal.Rptr.3d 637].
- This Instruction Upheld. ▸ People v. Carrasco (2012) 209 Cal.App.4th 715, 722–723 [147 Cal.Rptr.3d 383].
- General Intent Crime. ▸ *People v. Moore* (2018) 19 Cal.App.5th 889, 895-896 [228 Cal.Rptr.3d 261].

LESSER INCLUDED OFFENSES

This offense is a misdemeanor unless the amount of damage is $400 or more. (Pen. Code, § 594(b)(1) & (2)(A).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. When instructing on both the felony and misdemeanor, the court must provide the jury with a verdict form on which the jury will indicate if the amount of damage has or has not been proved to be $400 or more. If the jury finds that the damage has not been proved to be $400 or more, then the offense should be set at a misdemeanor.

RELATED ISSUES

Lack of Permission Not an Element
The property owner's lack of permission is not an element of vandalism. (*In re Rudy L*. (1994) 29 Cal.App.4th 1007, 1014 [34 Cal.Rptr.2d 864].)

Damage Need Not Be Permanent
To "deface" under Penal Code section 594 does not require that the defacement be permanent. (*In re Nicholas Y.* (2000) 85 Cal.App.4th 941, 944 [102 Cal.Rptr.2d 511] [writing on a glass window with a marker pen was defacement under the statute].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 277–285.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property,* § 143.11[2], Ch. 144, *Crimes Against Order,* § 144.03[2] (Matthew Bender).

2902 Damaging Phone or Electrical Line (Pen. Code, § 591)

The defendant is charged [in Count __] with (taking down[,]/ [or] removing [,]/ [or] damaging[,]/ [or] disconnecting/ [or] cutting/[or] obstructing/severing/making an unauthorized connection to) a (telegraph/telephone/cable television/electrical) line [in violation of Penal Code section 591].

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

<Alternative 1A—removed, damaged, or obstructed>

[1. The defendant unlawfully (took down[,]/ [or] removed[,]/ [or] damaged[,]/ [or] obstructed/ [or] disconnected/ [or] cut) [part of] a (telegraph/telephone/cable television/electrical) line [or mechanical equipment connected to the line];]

<Alternative 1B—severed>

[1. The defendant unlawfully severed a wire of a (telegraph/telephone/cable television/electrical) line;]

<Alternative 1C—unauthorized connection>

[1. The defendant unlawfully made an unauthorized connection with [part of] a line used to conduct electricity [or mechanical equipment connected to the line];]

AND

2. The defendant did so maliciously.

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

[As used here, *mechanical equipment* includes a telephone.]

New January 2006; Revised August 2015, September 2019

BENCH NOTES

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

The statute uses the term "injure." (Pen. Code, § 591.) The committee has replaced the word "injure" with the word "damage" because the word "injure" generally refers to harm to a person rather than to property.

The statute uses the phrase "appurtenances or apparatus." (Pen. Code, § 591.) The committee has chosen to use the more understandable "mechanical equipment" in place of this phrase.

Give the bracketed sentence that states "*mechanical equipment* includes a telephone" on request. (*People v. Tafoya* (2001) 92 Cal.App.4th 220, 227 [111 Cal.Rptr.2d 681]; *People v. Kreiling* (1968) 259 Cal.App.2d 699, 704 [66 Cal.Rptr. 582].)

AUTHORITY

- Elements ▸ Pen. Code, § 591.
- Maliciously Defined ▸ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- Applies to Damage to Telephone ▸ *People v. Tafoya* (2001) 92 Cal.App.4th 220, 227; *People v. Kreiling* (1968) 259 Cal.App.2d 699, 704 [66 Cal.Rptr. 582].
- "Obstruct" Not Unconstitutionally Vague ▸ *Kreiling v. Field* (9th Cir. 1970) 431 F.2d 502, 504.
- Applies to Theft of Service ▸ *People v. Trieber* (1946) 28 Cal.2d 657, 661 [171 P.2d 1].
- General Intent Crime. ▸ *People v. Quarles* (2018) 25 Cal.App.5th 631, 636 [236 Cal.Rptr.3d 49].

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 304, 305.

3130. Personally Armed With Deadly Weapon (Pen. Code, § 12022.3)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant was personally armed with a deadly weapon in the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] [and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose.]]

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

A person is *armed* with a deadly weapon when that person:

1. **Carries a deadly weapon [or has a deadly weapon available] for use in either offense or defense in connection with the crime[s] charged;**

   AND

2. **Knows that he or she is carrying the deadly weapon [or has it available].**

<If there is an issue in the case over whether the defendant was armed with the weapon "in the commission of" the offense, see Bench Notes.>

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

New January 2006; Revised December 2008, February 2013, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give ~~this~~ an instruction when the enhancement is charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed phrase "that is inherently deadly or one" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "~~When~~ In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the definition of "armed," the court may give the bracketed phrase "or has a deadly weapon available" on request if the evidence shows that the weapon was at the scene of the alleged crime and "available to the defendant to use in furtherance of the underlying felony." (*People v. Bland* (1995) 10 Cal.4th 991, 997–998 [43 Cal.Rptr.2d 77, 898 P.2d 391]; see also *People v. Wandick* (1991) 227 Cal.App.3d 918, 927–928 [278 Cal.Rptr. 274] [language of instruction approved; sufficient evidence defendant had firearm available for use]; *People v. Jackson* (1995) 32 Cal.App.4th 411, 419–422 [38 Cal.Rptr.2d 214] [evidence that firearm was two blocks away from scene of rape insufficient to show available to defendant].)

If the case involves an issue of whether the defendant was armed "in the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996)

13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

AUTHORITY

- Enhancement ▸ Pen. Code, § 12022.3.
- Deadly Weapon Defined ▸ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086–1087 [130 Cal.Rptr.2d 717].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Armed ▸ *People v. Pitto* (2008) 43 Cal.4th 228, 236–240 [74 Cal.Rptr.3d 590, 180 P.3d 338]; *People v. Bland* (1995) 10 Cal.4th 991, 997–998 [43 Cal.Rptr.2d 77, 898 P.2d 391]; *People v. Jackson* (1995) 32 Cal.App.4th 411, 419–422 [38 Cal.Rptr.2d 214]; *People v. Wandick* (1991) 227 Cal.App.3d 918, 927–928 [278 Cal.Rptr. 274].
- Must Be Personally Armed ▸ *People v. Rener* (1994) 24 Cal.App.4th 258, 267 [29 Cal.Rptr.2d 392]; *People v. Reed* (1982) 135 Cal.App.3d 149, 152–153 [185 Cal.Rptr. 169].
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

Penal Code Section 220

A defendant convicted of violating Penal Code section 220 may receive an enhancement under Penal Code section 12022.3 even though the latter statute does not specifically list section 220 as a qualifying offense. (*People v. Rich* (2003) 109 Cal.App.4th 255, 261 [134 Cal.Rptr.2d 553].) Section 12022.3 does apply to attempts to commit one of the enumerated offenses, and a conviction for violating section 220, assault with intent to commit a sexual offense, "translates into an

attempt to commit" a sexual offense. (*People v. Rich, supra,* 109 Cal.App.4th at p. 261.)

Multiple Weapons

There is a split in the Court of Appeal over whether a defendant may receive multiple enhancements under Penal Code section 12022.3 if the defendant has multiple weapons in his or her possession during the offense. (*People v. Maciel* (1985) 169 Cal.App.3d 273, 279 [215 Cal.Rptr. 124] [defendant may only receive one enhancement for each sexual offense, either for being armed with a rifle or for using a knife, but not both]; *People v. Stiltner* (1982) 132 Cal.App.3d 216, 232 [182 Cal.Rptr. 790] [defendant may receive both enhancement for being armed with a knife and enhancement for using a pistol for each sexual offense].) The court should review the current state of the law before sentencing a defendant to multiple weapons enhancements under Penal Code section 12022.3.

Pepper Spray

In *People v. Blake* (2004) 117 Cal.App.4th 543, 559 [11 Cal.Rptr.3d 678], the court upheld the jury's determination that pepper spray was a deadly weapon.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (3d ed. 2000) Punishment, §§ 311, 329.

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 644.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* § 91.31 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.20[7][c], 142.21[1][d][iii] (Matthew Bender).

3145. Personally Used Deadly Weapon (Pen. Code, §§ 667.61(e)(3), 1192.7(c)(23), 12022(b)(1) & (2), 12022.3)

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]][or the lesser crime[s] of _____ <*insert name[s] of alleged lesser offense[s]*>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally used a deadly [or dangerous] weapon during the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

A *deadly* [*or dangerous*] *weapon* is any object, instrument, or weapon that is [inherently deadly] [or] [dangerous] [or one that is] used in such a way that it is capable of causing and likely to cause death or great bodily injury.

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it was designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed[,] [and] [where the person who possessed the object was going][,] [and] [whether the object was changed from its standard form] [and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose.]]

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

Someone *personally uses* a deadly [or dangerous] weapon if he or she intentionally [does any of the following]:

[1. Displays the weapon in a menacing manner(./;)]

[OR]

[(2/1). Hits someone with the weapon(./;)]

[OR]

[(3/2). Fires the weapon(./;)]

[OR

(4/3). _____ *<insert description of use>*. **]**

<If there is an issue in the case over whether the defendant used the weapon "in the commission of" the offense, see Bench Notes.>

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

New January 2006; Revised June 2007, February 2013, September 2017, September 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give ~~this~~ an instruction defining the elements of the enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give all of the bracketed "or dangerous" phrases if the enhancement charged uses both the words "deadly" and "dangerous" to describe the weapon. (Pen. Code, §§ 667.61, 1192.7(c)(23), 12022(b).) Do not give these bracketed phrases if the enhancement uses only the word "deadly." (Pen. Code, § 12022.3.)

Give the bracketed phrase "inherently deadly" and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with "In deciding whether" if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

In the definition of "personally uses," the court may give the bracketed item 3 if the case involves an object that may be "fired."

If the case involves an issue of whether the defendant used the weapon "in the commission of" the offense, the court may give CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

AUTHORITY

- Enhancements ▸ Pen. Code, §§ 667.61(e)(3), 1192.7(c)(23), 12022(b)(1) & (2), 12022.3.
- Deadly Weapon Defined ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086–1087 [130 Cal.Rptr.2d 717].
- Objects With Innocent Uses ▸ *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].
- Personally Uses ▸ *People v. Bland* (1995) 10 Cal.4th 991, 997 [43 Cal.Rptr.2d 77, 898 P.2d 391]; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320 [45 Cal.Rptr.2d 602]; see also Pen. Code, § 1203.06(b)(2).
- "In Commission of" Felony ▸ *People v. Jones* (2001) 25 Cal.4th 98, 109–110 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].
- May Not Receive Enhancement for Both Using and Being Armed With One Weapon ▸ *People v. Wischemann* (1979) 94 Cal.App.3d 162, 175–176 [156 Cal.Rptr. 386].
- Inherently Deadly Defined ▸ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

RELATED ISSUES

No Duty to Instruct on "Lesser Included Enhancements"

"[A] trial court's sua sponte obligation to instruct on lesser included offenses does not encompass an obligation to instruct on 'lesser included enhancements.' " (*People v. Majors* (1998) 18 Cal.4th 385, 411 [75 Cal.Rptr.2d 684, 956 P.2d 1137].) Thus, if the defendant is charged with an enhancement for use of a weapon, the court does not need to instruct on an enhancement for being armed.

Weapon Displayed Before Felony Committed
Where a weapon is displayed initially and the underlying crime is committed some time after the initial display, the jury may conclude that the defendant used the weapon in the commission of the offense if the display of the weapon was "at least … an aid in completing an essential element of the subsequent crimes. . . ." (*People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705].)

Weapon Used Did Not Cause Death
In *People v. Lerma* (1996) 42 Cal.App.4th 1221, 1224 [50 Cal.Rptr.2d 580], the defendant stabbed the victim and then kicked him. The coroner testified that the victim died as a result of blunt trauma to the head and that the knife wounds were not life threatening. *(Ibid.)* The court upheld the finding that the defendant had used a knife during the murder even though the weapon was not the cause of death. (*Id.* at p. 1226.) The court held that in order for a weapon to be used in the commission of the crime, there must be "a nexus between the offense and the item at issue, [such] that the item was an instrumentality of the crime." *(Ibid.)* [ellipsis and brackets omitted] Here, the court found that "[t]he knife was instrumental to the consummation of the murder and was used to advantage." *(Ibid.)*

"One Strike" Law and Use Enhancement
Where the defendant's use of a weapon has been used as a basis for applying the "one strike" law for sex offenses, the defendant may not also receive a separate enhancement for use of a weapon in commission of the same offense. (*People v. Mancebo* (2002) 27 Cal.4th 735, 754 [117 Cal.Rptr.2d 550, 41 P.3d 556].)

Assault and Use of Deadly Weapon Enhancement
"A conviction [for assault with a deadly weapon or by means of force likely to cause great bodily injury] under [Penal Code] section 245, subdivision (a)(1) cannot be enhanced pursuant to section 12022, subdivision (b)." (*People v. Summersville* (1995) 34 Cal.App.4th 1062, 1070 [40 Cal.Rptr.2d 683].)

Robbery and Use of Deadly Weapon Enhancement
A defendant may be convicted and sentenced for both robbery and an enhancement for use of a deadly weapon during the robbery. (*In re Michael L.* (1985) 39 Cal.3d 81, 88 [216 Cal.Rptr. 140, 702 P.2d 222].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 40.

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 356-357, 361–369.

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 727.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing,* §§ 91.30, 91.81[1][d] (Matthew Bender).

3406. Mistake of Fact

The defendant is not guilty of _____ *<insert crime[s]>* **if (he/she) did not have the intent or mental state required to commit the crime because (he/she) [reasonably] did not know a fact or [reasonably and] mistakenly believed a fact.**

If the defendant's conduct would have been lawful under the facts as (he/she) [reasonably] believed them to be, (he/she) did not commit _____ *<insert crime[s]>***.**

If you find that the defendant believed that _____ *<insert alleged mistaken facts>* **[and if you find that belief was reasonable], (he/she) did not have the specific intent or mental state required for _____** *<insert crime[s]>***.**

If you have a reasonable doubt about whether the defendant had the specific intent or mental state required for _____ *<insert crime[s]>***, you must find (him/her) not guilty of (that crime/those crimes).**

New January 2006; Revised April 2008, December 2008, August 2014, September 2018

BENCH NOTES

Instructional Duty

The court must instruct on a defense when the defendant requests it and there is substantial evidence supporting the defense. The court has a **sua sponte** duty to instruct on a defense if there is substantial evidence supporting it and either the defendant is relying on it or it is not inconsistent with the defendant's theory of the case.

When the court concludes that the defense is supported by substantial evidence and is inconsistent with the defendant's theory of the case, however, it should ascertain whether defendant wishes instruction on this alternate theory. (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 389–390 [88 Cal.Rptr.2d 111]; *People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Substantial evidence means evidence of a defense, which, if believed, would be sufficient for a reasonable jury to find a reasonable doubt as to the defendant's

guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982–983 [38 Cal.Rptr.3d 624, 127 P.3d 40].)

If the defendant is charged with a general intent crime, the trial court must instruct with the bracketed language requiring that defendant's belief be both actual and reasonable.

If the mental state element at issue is either specific criminal intent or knowledge, do not use the bracketed language requiring the belief to be reasonable. (*People v. Reyes* (1997) 52 Cal.App.4th 975, 984 & fn. 6 [61 Cal.Rptr.2d 39]; *People v. Russell* (2006) 144 Cal.App.4th 1415, 1425–1426 [51 Cal.Rptr.3d 263].)

Mistake of fact is not a defense to the following crimes under the circumstances described below:

1. Involuntary manslaughter (*People v. Velez* (1983) 144 Cal.App.3d 558, 565–566 [192 Cal.Rptr. 686] [mistake of fact re whether gun could be fired]).
2. Furnishing cannabis to a minor (Health & Saf. Code, § 11352; *People v. Lopez* (1969) 271 Cal.App.2d 754, 760–762 [77 Cal.Rptr. 59]).
3. Selling narcotics to a minor (Health & Saf. Code, § 11353; *People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454] [specific intent for the crime of selling narcotics to a minor is the intent to sell cocaine, not to sell it to a minor]).
4. Aggravated kidnapping of a child under the age of 14 (Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206]).
5. Unlawful sexual intercourse or oral copulation by person 21 or older with minor under the age of 16 (Pen. Code, §§ 261.5(d), 287~~8a~~(b)(2); *People v. Scott* (2000) 83 Cal.App.4th 784, 800–801 [100 Cal.Rptr.2d 70]).
6. Lewd and lascivious conduct with a child under the age of 14 (Pen. Code, § 288(a); *People v. Olsen* (1984) 36 Cal.3d 638, 645–646 [205 Cal.Rptr. 492, 685 P.2d 52]).

AUTHORITY

- Instructional Requirements. ▸ Pen. Code, § 26(3).
- Burden of Proof. ▸ *People v. Mayberry* (1975) 15 Cal.3d 143, 157 [125 Cal.Rptr 745, 542 P.2d 1337].
- This Defense Applies to Attempted Lewd and Lascivious Conduct With Minor Under 14. ▸ *People v. Hanna* (2013) 218 Cal.App.4th 455, 461 [160 Cal.Rptr.3d 210].

RELATED ISSUES

Mistake of Fact Based on Involuntary Intoxication

A mistake of fact defense can be based on involuntary intoxication. (*People v. Scott* (1983) 146 Cal.App.3d 823, 829–833 [194 Cal.Rptr. 633].) In *Scott*, the court held that the defendant was entitled to an instruction on mistake of fact, as a matter of law, where the evidence established that he unknowingly and involuntarily ingested a hallucinogen. As a result he acted under the delusion that he was a secret agent in a situation where it was necessary to steal vehicles in order to save his own life and possibly that of the President. The court held that although defendant's mistake of fact was irrational, it was reasonable because of his delusional state and had the mistaken facts been true, his actions would have been justified under the doctrine of necessity. The court also stated that mistake of fact would not have been available if defendant's mental state had been caused by voluntary intoxication. (*Id.* at pp. 829–833; see also *People v. Kelly* (1973) 10 Cal.3d 565, 573 [111 Cal.Rptr. 171, 516 P.2d 875] [mistake of fact based on voluntary intoxication is not a defense to a general intent crime].)

Mistake of Fact Based on Mental Disease

Mistake of fact is not a defense to general criminal intent if the mistake is based on mental disease. (*People v. Gutierrez* (1986) 180 Cal.App.3d 1076, 1084 [225 Cal.Rptr. 885]; see *People v. Castillo* (1987) 193 Cal.App.3d 119, 124–125 [238 Cal.Rptr. 207].) In *Gutierrez*, the defendant was charged with inflicting cruel injury on a child, a general intent crime, because she beat her own children under the delusion that they were evil birds she had to kill. The defendant's abnormal mental state was caused in part by mental illness. (*People v. Gutierrez, supra,* 180 Cal.App.3d at pp. 1079–1080.) The court concluded that evidence of her mental illness was properly excluded at trial because mental illness could not form the basis of her mistake of fact defense. (*Id.* at pp. 1083–1084.)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 47.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.06 (Matthew Bender).

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Alternative Dispute Resolution (ADR): Mediation Confidentiality Disclosures Under Senate Bill 954

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Kristi Morioka, 916-812-8796, kristi.morioka@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: 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
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Alternative Dispute Resolution (ADR): Mediation Confidentiality Disclosures Under Senate Bill 954

Rules, Forms, Standards, or Statutes Affected
Approve form ADR-200

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 19, 2019

Contact
Kristi Morioka, Attorney,
916-643-7056
kristi.morioka@jud.ca.gov

Executive Summary

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 implements 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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve *Mediation Disclosure Notification and Acknowledgment* (form ADR-200), effective January 1, 2020.

The new form is attached at page 6.

Relevant Previous Council Action

This is a new legislative requirement and as such, the Judicial Council has not taken any previous action on this matter.

Analysis/Rationale

In 2017, the California Law Revision Commission made a recommendation to the Legislature that the statutes regarding mediation confidentiality be amended 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 often unaware 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 increase 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 Evidence Code reflects 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 and 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 the 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 amended 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.

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. The statute also requires that the form be presented in the preferred language of the client. Attorneys may provide translated forms in the languages needed by their clients.

Form ADR-200 informs the client that anything said at a mediation not only cannot be used against the client, but also cannot be used against the client's attorney. Without this form, 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 of the proceeding. 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 statements. The committee concluded that the form would provide uniformity and consistency.

Policy implications

The policy implications of informing consumers of legal mediation services arise from the legislation and not this proposal.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring rules cycle. The committee received comments from 10 entities including two courts, the Superior Courts of San Diego and Los Angeles Counties, four mediators/ADR administrators, a legislative director for the California Senate, the California Lawyers Association (Committee on Administration of Justice of the Litigation Section and the Executive Committee of the Family Law Section), and the Orange County Bar Association. The commenters that answered the questions posed in the proposal all indicated that the proposal appropriately addressed the stated purpose. The committee considered all comments; discussed below are the primary issues raised by the comments.

Signature blocks

Although the model disclosure language provided in Evidence code section 1129(d) provides one signature line for an attorney and one signature line for a client, nothing in the remainder of the section specifies the number of signature lines for either the attorney or the client. The committee recognized that there may be instances when there would be more than one client or more than one attorney participating in mediation, and that it could be helpful for the form to allow multiple signature lines for each. The committee circulated a draft form that had one signature line for the client, (consistent with subdivision (d)), but two signature lines for the attorneys (a departure from subdivision(d)). The proposal requested specific comments on whether there should be multiple signature lines for attorneys and clients.

Overwhelmingly, the commenters all wanted each client to receive, acknowledge, and sign their own form to create a better record that each client received a copy of the form and independently reviewed it. The proposed form therefore includes only one signature line for the client.

Although there were commenters that agreed with the proposal to include two attorney signature lines, the committee was ultimately persuaded by the two commenters that advocated for including only one attorney signature line per form because, like the reasoning above, it would create a better record if there were a separate form for each attorney that made the disclosure. The committee revised the form to provide one attorney signature line.

Other comments

The committee was of the view that it could provide additional clarification to the language of the statute. As circulated, therefore, the form included the word "Acknowledgement" in boldface in the middle of the page, to delineate one section from another. One commenter suggested that this should be deleted because it changes the meaning of the form by stressing some parts and not others. The committee agreed with this reasoning and removed "Acknowledgment" from the form.

Two commenters suggested adding language to the form to provide more specific information to the client. The first suggestion was to provide a more specific introduction to the Mediation Disclosure Notification and Acknowledgment: "Given that the preservation of confidentiality is considered essential to the proper functioning of mediation for parties to speak with candidness, California law generally makes mediation a confidential process." The committee considered this proposed language but decided it was sufficient to use the language in Evidence Code section 1129(d). This form is optional; attorneys can prepare their own forms if they want to use different language.

The second suggestion was to add language to the form to clarify that it is not intended for court use or is not to be filed with the court or similar words to that effect. The commenter suggested that neither the court, the mediator, nor its ADR program should be responsible for monitoring the compliance or failure of the attorney to meet this requirement. Itis clear from the absence of a space for a case number or a file endorsement stamp that this form is not to be filed. Also, the statute requires 12-point font and a single page document. Given these space limitations these requirements impose, the committee did not choose to adopt this suggestion.

Another commenter suggested that the committee should provide an information sheet regarding mediation confidentiality. This suggestion may be considered by the committee as a proposal in the next rule-making cycle.

Finally, one commenter suggested that the form be translated into several different languages including Spanish, Chinese, Korean, Vietnamese, and Tagalog. Requests for translation of Judicial Council forms and other documents are referred to the Court Language Access Services

Program for consideration under the priorities set forth in the Judicial Council's *Translation Protocol*[1] and *Translation Action Plan*[2].

Alternatives considered

The committee noted that the statute does not require the Judicial Council to adopt a form, but the committee ultimately decided that, for the sake of convenience to attorneys and to promote disclosure requirements, an optional form would be useful.

The committee also considered whether any changes to rules were needed—considering the new mediation disclosure requirements—but concluded that none were necessary.

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, no training needs are anticipated.

Attachments and Links

1. Form ADR-200, at page 6
2. Chart of comments, at pages 7–15
3. Link A: Evidence Code section 1129, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1129.&lawCode=EVID*
4. Link B: Senate Bill 954 (Stats. 2018, ch. 350), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB954*

[1] See Translation Protocol at *https://www.courts.ca.gov/documents/lap-Translation-Protocol.pdf*

[2] See Translation Action Plan at *https://www.courts.ca.gov/documents/lap-Translation-Action-Plan.pdf*

ATTORNEY NAME:	STATE BAR NO.:	
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE:	ZIP CODE:
TELEPHONE NO.:	E-MAIL ADDRESS:	

ADR-200

DRAFT

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.

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)

SPR19-09
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954
(Approve form ADR-200)

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

	Commenter	Position	Comment	Committee Responses
1.	Alcantara, Jennifer B. Senior Managing Attorney Superior Court of California, County of San Mateo	NI	1. Does the proposal appropriately address the stated purpose? Yes 2. Should there be multiple signature lines for multiple clients or should each client sign a separate acknowledgment? Each client should sign a separate acknowledgement form to account for the "preferred language" requirement (i.e. 2 or more clients with different preferred languages) and to recognize the separate/distinct malpractice claims multiple clients may have. 3. Should there be signature lines for more than one attorney? Neutral - I think 2 lines is enough but I am not in private practice. 4. Clarify the form use by adding language that the form is not intended for court use or is not to be filed with the court or words to that effect. Neither the court, the mediator, nor its ADR program should be responsible for monitoring the compliance or failure of the attorney to meet this requirement in the underlying case that is before the court.	The committee appreciates the comments. The proposed form will provide only one client signature line. No response needed. It's clear from the absence of a space for a case number or a file endorsement stamp that this form is not to be filed. Also, the statute requires 12-point font and a single page document. Given these space limitations the committee does not choose to adopt this suggestion.
2.	California Lawyers Association, Executive Committee of the Family Law Section	A	In response to the request for specific comments about the number of signature lines on the form, FLEXCOM suggests one signature line for each client and one for the attorney. This might	The committee appreciates the comments. The committee agrees with this comment. The proposed form will provide only one client signature line. The proposed form has

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

	Commenter	Position	Comment	Committee Responses
	By Saul Bercovitch, Director of Governmental Affairs California Lawyers Association		create a better record that each client received a copy of the form and independently reviewed it.	also been revised to include a single line for one attorney.
3.	Durazo, Yvette, MA ACC ADR Program Administrator	A	Put also emphasize on the benefit for the parties, and not just only that this form is a protection for the attorneys in case of a malpractice legal action against the attorney. Thank you for taking into consideration my comment. What I was thinking is along the lines as to the 'why' this new Bill is of value to the parties. Here is a more specific introduction to the Mediation Disclosure Notification and Acknowledgment, I may suggest. Given that the preservation of confidentiality is considered essential to the proper functioning of mediation for parties to speak with candidness, California law generally makes mediation a confidential process. Clients will rarely go to read Section 703.5, 1115 through 1129 of Evidence Code, therefore I think it is important to write Mediation Disclosure Notification and Acknowledgment form in such a way that demonstrates the Ca law wants to protect our confidentiality, and at the same time protect attorneys for malpractice.	The committee appreciates the comments. The committee considered the proposal but decided it was sufficient to use the language in Evidence Code 1129(d). This form is optional; attorneys can prepare their own forms if they want to use different language.

SPR19-09
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954
(Approve form ADR-200)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Responses
4.	Kelly, Ron Private Mediator Berkeley, California	NI	I write to you as someone who was centrally involved in the negotiations which crafted Senate Bill 954, and also served as lead expert adviser in the late 90s in drafting the chapter of the Evidence Code which this bill amended. I respectfully request that you: 1. Provide a very short instruction/information sheet incorporating and combining the points in the excellent summaries found in the bullet points on pages 2 and 3 of the Invitation to Comment, and, 2. Translate and publish the form in at least the four additional common California languages in which I understand the Council has often provided forms in the past. I understand these to be Spanish, Chinese, Korean, and Vietnamese. Please also consider adding Tagalog. Providing these translations would be an enormous service to both clients and their attorneys. The Council can provide these translations in a uniform and professional manner without the concern for the liability that a non-governmental party might incur.	The committee appreciates the comments. The committee may consider this proposal in the next rule making cycle. Requests for translation of Judicial Council forms and other documents are referred to the Court Language Access Services Program for consideration under the priorities set forth in the Judicial Council's Translation Protocol and Translation Action Plan. See Translation Protocol at https://www.courts.ca.gov/documents/lap-Translation-Protocol.pdf and the Translation Action Plan at https://www.courts.ca.gov/documents/lap-Translation-Action-Plan.pdf
5.	Orange County Bar Association By Deirdre Kelly, President	AM	1) At the third paragraph of the proposed form, in bold, "Acknowledgment:" has been inserted, contrary to the safe harbor language of Evidence Code §1129(d). This appears to be an	The committee appreciates the comments. The committee agrees with the removal of the bold type word "Acknowledgment" for the reasons articulated by the commenter.

	Commenter	Position	Comment	Committee Responses
			effort to designate the paragraph as "the" acknowledgment discussed throughout Evidence Code §1129. Accordingly, the proposed form should be modified to remove the inserted term and include only the safe harbor language as set forth in Evidence Code §1129. Evidence Code §1129 contemplated that the whole of the disclosure document (as the statute refers to it), when signed by the client, would constitute their acknowledging receipt and understanding of the disclosures contained therein. The third paragraph does not contain the language of an acknowledgment. It does not use any form of "acknowledge," and it does not reference the "foregoing." Rather, it continues the educative tone and function of the disclosure document, further characterizing and describing previously mentioned concepts and containing new, additional information important to the client regarding needed agreement of all participants as to the use of mediation communications Likewise, the [n]ote which follows the third paragraph contains additional clarification and information for the client. Finally, it is believed inserting any designation or stressing any portion of the text over another	

	Commenter	Position	Comment	Committee Responses
			disrupts the flow of the information provided and is detrimental to the client's understanding of the disclosures and import of the document as a whole.	
			2) At the foot of the proposed form, space has been included for two attorney signatures. For the reasons stated below in response to Request for Specific Comments, the proposed form should be modified to remove the space for an additional attorney signature.	The committee agrees, and the proposed form will be modified accordingly.
			Responses to Request for Specific Comments	
			Does the proposal appropriately address the stated purpose? Yes, provided the proposal is modified as suggested above.	No response required.
			Should there be multiple signature lines for multiple clients or should each client sign a separate acknowledgement? Each client should sign a separate disclosure document for the reasons stated in response to the following question.	The committee agrees, and the proposed form will include one client signature line.
			Should there be signature lines for more than one attorney? The [proposed] form currently has signatures for up to two attorneys.	The proposed form will be modified in accordance with this suggestion. It would create a better record if there were a separate form for each attorney that made the disclosure.

SPR19-09
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954 (Approve form ADR-200)

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

	Commenter	Position	Comment	Committee Responses
			The wording throughout Evidence Code §1129 contemplates a single attorney providing the disclosure document to a single client. If multiple attorneys or clients were contemplated, this would have been simple to indicate. What was contemplated by the statute is an educative interaction between an attorney and a client, resulting in that client's understanding and an executed form evidencing this. This process was not meant to be a pro forma activity where shortcuts for purposes of efficiency are appropriate or wise. To fulfill the purpose of Evidence Code §1129 and afford the level of consumer protection believed due the client, each client should review and sign their own disclosure document. This would stress the importance of the disclosures set forth and provide space in what may be a multi-party conversation for contemplation of the ramifications and implications of those disclosures, while affirming the individual's understanding and avoiding cavalier response, groupthink, or peer pressure. As to the attorney who wishes to avail himself or herself of the strong protections afforded by the statute, each should want to make certain that it irrefutably may be said he or she actually and individually provided the required disclosure document to a particular	

SPR19-09
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954 (Approve form ADR-200)

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

	Commenter	Position	Comment	Committee Responses
			client who then actively affirmed their understanding. To do otherwise is contrary to the language of Evidence Code §1129 and invites confusion, mischief, and challenge.	
6.	Powers, Nancy L. Trust Mediator & Trust/Estate Attorney POWERS LAW	NI	As an estate/trust lawyer for just about 4 decades, a trust dispute mediator for many years, and a past member of the Board of the Contra Costa County Bar Association ADR Section, I have been centrally involved for several years with the issues surrounding what has been crafted as Senate Bill 954. I agree with and support Ron Kelly's requests outlined below [above].	The committee appreciates the comments.
7.	Resetarits, Heather Legislative Director Sacramento, California	A	Each client should sign a separate acknowledgment document: One document per client. The rest looks good.	The committee appreciates the comments. The committee agrees with this comment and the proposed form will provide only one client signature line per form.
8.	Superior Court of California, County of Los Angeles	A	Request for Specific Comments: Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose. Should there be multiple signature lines for multiple clients or should each client sign a separate acknowledgment?	The committee appreciates the comments. No response required. The committee thanks the commenter. The proposed form will include only one client signature line.

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

SPR19-09
Alternative Dispute Resolution: Mediation Confidentiality Disclosures Under Senate Bill 954 (Approve form ADR-200)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Responses
			Each client should sign a separate acknowledgment. A civil matter may have a large amount of parties. Should there be signature lines for more than one attorney? The form currently has signature space for up to two attorneys. The proposed form with space for up to two attorneys is appropriate.	The committee has discussed this item and the proposed form will be revised to have a signature line for one attorney. The committee agrees with an earlier commenter that it will create a better record if there were a separate form for each attorney that made the disclosure.
9.	Superior Court of California, County of San Diego By: Mike Roddy, Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Should there be multiple signature lines for multiple clients or should each client sign a separate acknowledgment? Each client should sign a separate acknowledgment. Q: Should there be signature lines for more than one attorney? The form currently has signature space for up to two attorneys. The proposed form is sufficient.	The committee appreciates the comments. No response required. The proposed form will provide only one client signature line. The committee has discussed this item the form will be revised to have space for one attorney.
10.	The Committee on Administration of Justice (CAJ) of the California Lawyers Association's Litigation Section	A	CAJ agrees with this proposal. Proposed Form ADR-200 will create a standard document that lawyers may use to comply with the Evidence Code's new disclosure	The committee appreciates the comments. No response required.

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

	Commenter	Position	Comment	Committee Responses
			requirements. It simply sets forth, verbatim, the statutory safe harbor language with signature lines for counsel and client. It will promote uniform practice at mediations, consistent with the statutory provisions, with the salutary benefit of increasing awareness in the bar of the new disclosure requirements. The Invitation to Comment contains a request for specific comments on the following question: "Should there be multiple signature lines for multiple clients or should each client sign a separate acknowledgment?" Although the statute is silent on this point, to further its consumer protection purpose, CAJ believes that each client should be required to sign a separate disclosure document. If done on one form, one client signing could potentially influence subsequent clients who must decide independently whether to sign.	The committee agrees with the comment and the reasoning to have one client signature line per form.

Item number:10

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Civil Practice and Procedure: Separate Statements for Discovery Motions

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.1345

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 13, 2019

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

Executive Summary

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 proposed rule reflects those changes and expands them to several additional types of discovery as well.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.1345, effective January 1, 2020, to implement the provisions of Assembly Bill 2230.

The text of the amended rule is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted the rule that separate statements be included with certain discovery motions in 1984. The council has made minor modifications over the years, most recently in 2001 when the rule was reorganized and expanded to include all motions involving the content of a discovery request or the response to such a request.

Analysis/Rationale

Currently, rule 3.1345(a)[1] requires that in 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).) The rules also require that any motion (including motions to compel discovery) be accompanied by a memorandum, which must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the relevant law. (Rule 3.1113.)

In some instances, parties have believed that the rule requiring the separate statement in addition to the memorandum results in unnecessary repetition, and so have asked courts for leave to submit alternative documents in place of the separate statement. Assembly Bill 2230 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 that currently require such a statement if 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." This expands somewhat the impact of AB 2230 to cover all motions in which separate statements are currently required, rather than just the three types addressed in the statute. [2] The committee concluded that the exception should be extended to all the types of

[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.

[2] Because the requirement for separate statements is embodied in the California Rules of Court, not statute, its application can be modified by rule.

discovery motions subject to the separate statement rule. [3] The committee concludes that if this discretion will be useful to judicial officers on, for example, motions to compel further responses to interrogatories, it would 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 legislative history does not indicate that the Legislature saw any need to require separate statements in the discovery types *not* addressed by the new law,[4] and neither does the committee.

Policy implications

The committee is not aware of any policy implications from this rule amendment.

Comments

The proposal was circulated in spring 2019 for public comment, and seven comments were received, all generally favorable. A chart containing all the comments and the proposed responses is attached following the proposed rule.

The Committee on the Administration of Justice (CAJ) of the California Lawyers Association, Orange County Bar Association, and the Superior Courts of Los Angeles and San Diego Counties all fully agreed with the amendments as proposed. In relation to expanding the impact of AB 2230, CAJ noted that it "believes there is no logical difference between the categories of discovery motions addressed by AB 2230 and those not covered by the statute. Not revising the rule of court risks confusion if some but not all discovery motions are subject to the standard set forth in AB 2230."

Two commenters, a judge from Superior Court of San Bernardino County and a chief deputy from the Superior Court of Riverside County, agreed with the proposal generally but sought modification, particularly as to the phrase "a concise outline." The language in the amendment comes directly from the statute. The committee considered the comments and concluded that the statutory language was appropriate and that more detailed requirements are not necessary in the rule.

---

[3] Currently, rule 3.1345 applies to and requires separate statements to be filed in all motions involving the content of a discovery request or the response to such a request, and lists the following discovery motions as being included in the application of the rule:

(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).)

[4] 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.*

The commenter from Superior Court of Riverside County proposed that the rule should require that for a motion to compel answers at deposition, the exact language of the deposition questions and objections should be required because the court would not have easy access to the transcripts. The committee disagrees that the rule should include different requirements as to the outlines for particular types of discovery requests. It is up to the court's discretion as to whether the exception from requirement of a separate statement—which does require the text of the questions—is appropriate for a particular motion.

There were also minor nonsubstantive textual changes made to the rule in response to comments received.

Alternatives considered

In light of the change in law, the committee had no option but to amend rule 3.1345 in some way. 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, and not inconsistent with AB 2230.

Fiscal and Operational Impacts

The amended rule should have little impact on the courts beyond the training that judicial officers and clerks may require regarding the statutory change. One court commented that it anticipated minor cost savings due to judicial officers and research attorneys spending less time reviewing discovery requests.

Attachments and Links

1. Cal. Rules of Court, rule 3.1345, at page 5
2. Chart of comments, at pages 6–10
3. Link A: Assembly Bill 2230 (Stats. 2018, ch. 317), *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2230*

Rule 3.1345 of the California Rules of Court is amended, effective January 1, 2020, to read:

Rule 3.1345. Format of discovery motions

(a) Separate statement required

Except as provided in (b), ~~A~~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) When 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) * * *

SPR19-10

Civil Practice and Procedure: Separate Statements for Discovery Motions (Amend Cal. Rules of Court, rule 3.1345)

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

	Commenter	Position	Comment	Committee Response
1.	Committee on Administration of Justice (CAJ) of the Litigation Section of California Lawyers Association by Jordanna G. Thigpen, Chair, and Saul Bercovitch Director of Governmental Affairs California Lawyers Association	A	CAJ agrees with this proposal. Assembly Bill 2230 (effective January 1, 2020), authorizes courts to accept an outline of the discovery requests and responses in dispute in lieu of a separate statement for motions to compel further responses to interrogatories, demands for inspection, and requests for admission. The proposed revisions to Rule of Court 3.1345 would expand the categories of discovery motions for which the courts may accept an outline of the dispute to include all motions for which a separate statement is currently required. CAJ believes there is no logical difference between the categories of discovery motions addressed by AB 2230 and those not covered by the statute. Not revising the Rule of Court risks confusion if some but not all discovery motions are subject to the standard set forth in AB 2230. Further, CAJ questions the utility of separate statements in discovery motions in any event. They are often repetitive and lengthy documents that simply repeat arguments made in the body of the motion itself. That view has essentially been acknowledged by AB 2230 and should be extended to other motions to compel.	The committee acknowledges the commenters agreement with the proposal.

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

SPR19-10

Civil Practice and Procedure: Separate Statements for Discovery Motions (Amend Cal. Rules of Court, rule 3.1345)

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

	Commenter	Position	Comment	Committee Response
2.	Hon. Janet Frangie Judge of the Superior Court of California, County of San Bernardino	AM	I do not understand clearly what you are trying to change. Are you proposing that just the questions and answers be submitted in outline form and then the "Argument" portion is omitted? It is true that these Separate Statements are repetitive in the Argument section and could use some revision but it is more a function of the attorneys not taking the time to be specific in their arguments about why a response should be compelled. Clarification is needed as to what you mean by "Outline" or is this meant to be intentionally vague to allow the court to decide what format it wants. My next question is how is this implemented - by a courtroom rule? Thank you for your consideration.	The committee intends to implement AB 2230, which provides that, in lieu of the separate statement currently required by this rule to be filed along with any motion to compel, a court may allow a party to submit a concise outline of the request and response in dispute. The motion to compel itself, would still be required, and the legal argument would go in the memorandum required to accompany the motion. (See Cal. Rules of Court, rule 3.113). The committee has used the terminology used in the statute. The statute gives the authority to the court to make the exception. Implementation may be by direction of the judicial officer or by local rule.
3.	Julie Goren Lawdable Press Sherman Oaks, California	AM	Insert "Except as provided in (b)(2)," at the beginning of (a). In (b)(2), delete "With a motion for which" and replace it with "When".	The rule has been revised to reflect this suggestion The rule has been revised to reflect this suggestion.
4.	Orange County Bar Association by Deirdre Kelly President	A	No specific comment.	The committee acknowledges the commenters agreement with the proposal.

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

SPR19-10

Civil Practice and Procedure: Separate Statements for Discovery Motions (Amend Cal. Rules of Court, rule 3.1345)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Los Angeles	A	**Request for Specific Comments** **Does the proposal appropriately address the stated purpose?** Yes, the proposal addresses the stated purpose. **Should the rule extend to all discovery motions in the rule, as proposed?** Yes, the rule should extend to all discovery motions. **Would the proposal provide cost savings? If so, please quantify.** We anticipate minor cost savings due to judicial officers and research attorneys spending less time reviewing discovery requests. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** The proposed bill does not impact clerical operations; however, judicial officers and research attorneys may need additional training. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?**	The committee acknowledges the commenters agreement with the proposal. The committee appreciates the court's providing information regarding implementation.

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

SPR19-10
Civil Practice and Procedure: Separate Statements for Discovery Motions (Amend Cal. Rules of Court, rule 3.1345)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Yes, three months would be sufficient.	
6.	Superior Court of Riverside County By Susan Ryan Chief Deputy, Legal Services	AM	Concerning Rule 3.1345(b)(2), the phrase "a concise outline of the discovery request and each response in dispute" is unclear – whether this is intended to be a streamlined version of a separate statement or something else. Without some guidance as to the format required, it appears that it is open to interpretation by attorneys, who will potentially create an unlimited number of their own versions of the outline. Also, the change to Rule 3.1345 is proposed to be applied to all discovery that currently requires separate statements. As to motions to compel answers at deposition, an outline should still require the exact language of the deposition questions and objections since the precise wording of the question is critical to a correct resolution of the issue and the deposition transcript does not provide immediate access to the wording in the way that special interrogatories or other forms written discovery constitute an easy reference material.	The committee has used the terminology used in the statute. The committee disagrees that the rule should include different requirements for particular types of discovery requests. It is up to the court's discretion as to whether the exception from requirement of a separate statement (which does require the text of the questions) is appropriate for a particular motion.
7.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes.	The committee acknowledges the commenters agreement with the proposal.

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

	Commenter	Position	Comment	Committee Response
			Q: Should the rule extend to all discovery motions in the rule, as proposed? Yes. 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? Notification to judicial officers and courtroom staff. Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. No additional comments.	The committee appreciates the court's providing information regarding implementation.

Item number:11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Small Claims: Information about Court Interpreters

Rules, Forms, Standards, or Statutes Affected
Revise forms SC-100 and SC-100-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 14, 2019

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

Executive Summary

The Civil and Small Claims Advisory Committee recommends revisions to two small claims forms in light of the repeal of Code of Civil Procedure section 116.550 in Senate Bill 1155. 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 from the forms all references to the content of this repealed law and more closely reflect current law.

Recommendation

To correct information in the forms regarding interpreters, the Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2020, revise:

1. The "How to Get Help With Your Case" section of *Information for the Small Claims Plaintiff* (form SC-100-INFO); and

2. The "Information for the defendant" section of *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100).

The revised forms are attached at pages 6–12.

Relevant Previous Council Action

The Judicial Council adopted form SC-100 and the predecessor to form SC-100-INFO in 1977 and has subsequently revised both forms numerous times to reflect statutory changes, add and revise pertinent information, and make them easier for small claims litigants to understand and use. The interpreter instructions on both these forms were revised, effective January 1, 2008, to reflect statutes that previously required courts to charge for court interpreters in civil matters and case law, stating that courts could provide a free court interpreter for an indigent small claims party who needed one, and should do so if an interpreter was available. (*Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412.)

The forms were revised again, effective January 1, 2017, to reflect the enactment of Evidence Code section 756. The revisions at that time removed references to fees for interpreters and fee waivers because courts can no longer charge for interpreter services. In addition, the order of information on the forms was changed to advise small claims litigants to ask about the availability of a court-provided interpreter, while also cautioning that an interpreter might be unavailable in light of the low preference given to small claims cases in Evidence Code section 756. The items also advised litigants that they could bring an adult who is not a witness or an attorney to interpret for them and could ask the court for a list of interpreters for hire, as provided in Code of Civil Procedure section 116.550.

Analysis/Rationale

Before enactment of SB 1155 (Hueso; Stats. 2018, ch. 852), 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 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, removing from the courts the authority to regularly allow family or friends to interpret for parties at small claims hearings. 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 unavailable, 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 is the rule that has been developed by the council in this area. That rule 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] Although some parties might be able to bring more formally qualified interpreters with them to court (i.e., those who 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 impact substantive rights.

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."[4] Because small claims trials, although often not complex, are hearings that clearly affect a party's substantive rights, courts generally may not use temporary interpreters for such trials.

Currently, two Judicial Council forms for small claims parties include information directed to parties with limited English proficiency: *Information for the Plaintiff* (form SC-100-INFO) and *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100). under the "Information for the defendant" section. Each contains the same basic information: the party should ask the court for an interpreter as soon as possible; if none is available, the party may bring an adult to interpret or get a list of interpreters from the court.[5]

---

[1] Gov. Code, § 68561(c), (d).

[2] *Ibid.*; 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(b)(7) and (d)(4).)

[4] The separate advisory committee comment for (d)(4) notes that the rule providing for use of temporary interpreters is "not intended to be used to meet the extended or ongoing interpretation needs of LEP court users."

[5] Form SC-100, in the "Information for the defendant" section on page 4, currently states the following:

Continued on next page.

The revised text eliminates the reference to the list of interpreters for hire and the informal interpreters who, under the new law, the court may no longer regularly use to interpret for small claims trials. The text identifies a form on which to make the request and warns of a possible 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 and a form that may be used for having an interpreter provisionally qualified, if appropriate.[6]

Policy implications

These form revisions will bring the forms in line with the current law—which is now the same in all civil cases—on the use of interpreters in small claims proceedings. The committee notes that, because small claims cases, as "other civil cases," are the lowest priority level on the list in Evidence Code section 756, complying with the new law may be difficult in those cases.

Comments

The proposal circulated for public comment in spring 2019. The three comments, all in favor of the revisions, are from the Superior Courts of Los Angeles and San Diego Counties and the Orange County Bar Association. A chart containing all the comments received is attached at pages 13–17.

In reviewing the forms following circulation, the committee decided to further simplify the language and to add a citation to the form for provisionally qualified interpreters.

Alternatives considered

Because the text of the current forms no longer reflects current law, the committee did not consider *not* revising the items.

The committee did consider the alternative of including an explanation that temporary interpreters might be used for nonsubstantive proceedings in small claims cases, 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

---

> **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.

Form SC-100-INFO 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.

[6] The Spanish-language version of the item on form SC-100 has been modified to reflect these revisions.

believe they would be able to bring a friend to interpret at the small claims trial, 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.

Attachments and Links

1. Forms SC-100 and SC-100-INFO, at pages 6–12
2. Chart of comments, at pages 13–17
3. Link: Senate Bill 1155, 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

08-13-2019

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 or local court form 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 been approved by the court as a certified, registered, or provisionally qualified interpreter. (See Cal. Rules of Court, rule 2.893, and form INT-140.)

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 or a local court form 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 been approved by the court as a certified, registered, or provisionally qualified interpreter. (See Cal. Rules of Court, rule 2.893, and form INT-140.)
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):*

SPR19-11
Small Claims: Information about Court Interpreters (Revise forms SC-100 and SC-100-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By Deirdre Kelly President Newport Beach	A	The proposal appropriately addresses the stated purpose.	The committee acknowledges the commenter's agreement.
2.	Superior Court of Los Angeles County	A	**Request for Specific Comments** **Does the proposal appropriately address the stated purpose?** Yes, the proposal addresses 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?** Training would not be required for clerical operations as the bill does not impact the clerical process. **Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementing the revised forms?** Yes, two months would be sufficient.	The committee acknowledges the commenter's agreement with the proposal and appreciates the information on the cost and implementation matters.

	Commenter	Position	Comment	Committee Response
3.	Superior Court of Orange County Civil, Small Claims and Language Access Services divisions by Sean E. Lillywhite Administrative Analyst/Officer Training & Analyst Group	NI	Based on our interpretation of the code, it is not clearly apparent that small claims trials fall outside of the 'brief routine matter' language (See Cal. Rules of Court, rule 2.893(d)(4)) that allows usage of temporary interpreters and should ultimately be decided by judicial discretion. While you did footnote the advisory committee comments on what judges should consider when determining what constitutes a brief routine matter, it is still leaving the decision in the judge's hands. It is also our own opinion that having no interpreter at all is clearly more determinantal to the litigant's substantive rights than having a temporary interpreter. The language also runs somewhat contrary to our current understanding of the Judicial Council's guidance for language expansion. Reporting, for example, asks us to exclude any counts of temporary interpreters in small claims, as they do not consider it as the court being unable to provide services or a denial of services. (To be clear, they do ask for these counts in other	The advisory committee understands current law, in light of SB 1155's eliminating authorization for courts to use informal interpreters in small claims court, as not allowing the regular use of temporary interpreters for small claims trials. The provisions of Rule 2.893(d) do not change the impact of SB 1155, because small claims trials are not "brief, routine matters" under that rule, but rather evidentiary hearings that will have impacts on the parties' substantive rights, for which the court must "keep[] in mind the consequences that could flow from inaccurate or incomplete interpretation of the proceedings." (Rule 2.893, Advisory Committee Comment.) The Advisory Committee Comment also notes that the rule providing for use of temporary interpreters is "not intended to be used to meet the extended or ongoing interpretation needs of LEP court users." This comment appears to represent a misunderstanding of discussions with staff about rule 2.895, which requires courts to track requests for *court* interpreters and whether such requests are granted or denied. Staff is not aware of any distinctions for tracking such requests in small claims cases.

	Commenter	Position	Comment	Committee Response
			case types.) We were also asked to use a case type priority list, pursuant to EC 756, that lists small claims as the lowest priority. While we have greatly expanded our interpreter services to small claims, we do not have the resources to do so completely, particularly for rare languages.	The committee agrees that small claims cases are, with "other civil cases", at the lowest priority level in the list in Evidence Code section 756, which can make complying with the new law difficult in those cases. It is hoped that increased use of video remote interpreting and telephonic interpreting will provide greater access to certified and registered interpreters.
			We respectfully ask that the language be changed to note that a temporary interpreter may be used in small claims, with the proper qualification approved by the court.	For the reasons stated above, the committee declined to accept the suggestion that the forms should inform small claims parties that temporary interpreters could be used.
			Court staff comments: In the proposal, the committee opted to omit information on the use of temporary interpreters. Respectfully, we consider this omission a mistake that could lead to confusion among court staff and delay to the public. Although temporary appointments are discouraged in favor of certified / registered interpreters, the fact is that temporary appointments are necessary. If parties feel from the outset that they cannot bring someone with them to help, it could result in unnecessary continuances. To avoid any misunderstanding, an explanation about temporary interpreters should be included. Otherwise, the court potentially may be	See response above. Also, the only information about temporary interpreters the committee considered including was that they would be permitted for "brief, routine" procedural matters, such as requests for continuing a trial date. The committee agrees that the new law raises access issues, but Judicial Council forms must conform with the law.

	Commenter	Position	Comment	Committee Response
			limiting parties that don't speak English rather than helping them.	
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: 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? Updating local packets to include revised forms. San Diego currently provides interpreters in small claims actions. Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementing the revised forms? Yes. **GENERAL COMMENTS:** **SC-100 – What if I don't speak English well?** (Page 4)	The committee acknowledges the commenter's agreement and appreciates the information on the cost and implementation matters. Both forms have been modified to reflect these suggestions.

	Commenter	Position	Comment	Committee Response
			Propose that second sentence be modified as follows: "You may use form INT-300 or **local court form** to request an interpreter." **SC-100-INFO– How to Get Help With Your Case** (Page 2) Propose that second sentence be modified as follows: "You may use form INT-300 or **local court form** to request an interpreter."	

Item number:12

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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 . . . .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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Civil Practice and Procedure: Case Management Rules

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.720

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 13, 2019

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

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the discretionary exemption to the statewide case management rules be made permanent to allow flexibility in case management where courts so desire. 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. In 2018, the Commission on the Future of California's Court System recommended that the emergency exemption be made permanent and the advisory committee is furthering that recommendation by this proposal.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.720, effective January 1, 2020, to make the emergency provisions allowing exceptions to the rule permanent.

The amended rule is attached at page 5.

Relevant Previous Council Action

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.

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 three 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.

Analysis/Rationale

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, however, 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. (Super. Ct. L.A. County, Local Rules, rule 3.23.)[4]

---

[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 (*Feb. 26, 2013), which may be found at *http://www.courts.ca.gov/documents/jc-20130226-itemC.pdf*.

[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 the 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 five master calendar departments.

- 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 the 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 court's webpage for requesting trial setting and arbitration or mediation. (Super. Ct. 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. (Super. Ct. San Bernardino County, Local Rules, rule 411.)[5]
- Superior Court of San Joaquin County currently exempts all limited cases from the case management rules. (Super. Ct. 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. (Super. Ct. Shasta County, Local Rules, rule 3.02.)[6]

The Commission on 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

[5] This court reports that it would like to continue using this alternate procedure for managing its civil cases.

[6] The 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 management statements generally need to be filed. See, e.g., Super. Ct. Mendocino County, Local Rules, rule 2.1; and Super. Ct. Stanislaus County, Local Rules, rule 3.02.C.

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 recommends 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 will 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 will permit those courts that have already made use of this exemption to continue to do so and will permit additional courts to invoke the exemption if they so choose.

Comments

Four comments were received, all in favor of allowing the emergency exemptions to the rule to become permanent. Commenters were the Committee on the Administration of Justice of the California Lawyers Association, the Orange County Bar Association, and the Superior Courts of Los Angeles and San Diego Counties. The Los Angeles court noted that it was making use of the exemption in its court.

A chart containing all the comments received, and proposed committee responses, is attached at pages 6–8.

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.

Fiscal 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 be used if a court determined that it would be of some financial benefit to the court.

Attachments

1. Cal. Rules of Court, rule 3.720, at page 5
2. Chart of comments, at pages 6–8

[8] Futures Commission Report, p. 25. The report may be viewed in its entirety at *https://www.courts.ca.gov/documents/futures-commission-final-report.pdf*.

Rule 3.720 of the California Rules of Court is amended, effective January 1, 2020, to read:

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 s~~Suspension 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.~~

SPR19-12

Civil Practice and Procedure: Case Management Rules (Amend Cal. Rules of Court, rule 3.720)

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

	Commenter	Position	Comment	Committee Response
1.	Committee on Administration of Justice (CAJ) of the Litigation Section of the California Lawyers Association by Jordanna G. Thigpen, Chair, and Saul Bercovitch Director of Governmental Affairs California Lawyers Association	A	CAJ agrees with this proposal. Letting courts decide whether certain categories or types of civil cases should be exempted from case management rules promotes efficiency and may be more cost-effective to litigants. While uniformity in practice may be desirable as a general proposition, the fact that courts in only six counties (of 58 in California) have utilized the existing temporary suspension since 2013 should allay any concerns that a cumbersome patchwork of county-dependent rules would necessarily result if the proposal is approved.	The committee appreciates the comment.
2.	Orange County Bar Association by Deirdre Kelly President	A	No specific comments.	The committee appreciates the comment.
3.	Superior Court of Los Angeles County	A	**Request for Specific Comments** **Does the proposal appropriately address the stated purpose?** Yes, the proposal addresses 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.**	The committee appreciates the comment.

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

	Commenter	Position	Comment	Committee Response
			No, as the exemptions are already in place in Los Angeles. **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.** N/A **Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** N/A **How well would this proposal work in courts of different sizes?** Courts will have the ability to effectively manage their case load and decrease the amount of time clerical and judicial staff spend on processing cases.	The committee appreciates the comment.
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Would the proposal provide cost savings? If so, please quantify.	The committee appreciates the comment.

	Commenter	Position	Comment	Committee Response
			Yes, for those courts that elect to exempt certain case types or categories from mandatory case management conferences. There would be no cost savings for courts that do not exercise an exemption. Q: 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? There would be no implementation impact for San Diego, as there would be no change to its current practice. Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementing the revised forms? 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. No additional comments.	The committee appreciates the responses to the questions.

Item number: 13

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Criminal Procedure: Vacatur Relief for Human Trafficking Victims

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Standards of Judicial Administration, standard 4.15

Recommended by
Criminal Law Advisory Committee

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends adopting a new standard of judicial administration to provide guidance to judges and court administrators on implementing vacatur relief under Penal Code section 236.14, which provides for a petition process to vacate an arrest or conviction for a nonviolent offense that occurred while the petitioner was a victim of human trafficking.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council adopt California Standards of Judicial Administration, standard 4.15, effective January 1, 2020, to:

1. Provide guidance on procedures to consolidate hearings to vacate multiple arrests and convictions that occurred in the same county;

2. Recommend measures to preserve the confidentiality of the petition, related filings, court records, and the petitioner's identity in proceedings accessible to the public;

3. Recommend an initial court review period prior to setting a hearing;

4. Recommend that courts provide timely notification of their decisions to relevant parties; and

5. Identify additional relief the court should consider when granting a petition for vacatur relief.

The text of the new standard is attached at pages 6–8.

Relevant Previous Council Action

In the spring of 2018, the Criminal Law Advisory Committee circulated a proposal (see Link B) for two new optional forms in response to legislation establishing Penal Code section 236.14. The committee received eight comments in response. Two of the commenters agreed with the proposal; 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, 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 (Cal. Rules of Court, rule 1.5(c)) —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 committee also decided to move forward with the proposal due to the high level of public interest in guidance on the vacatur process.

Relatedly, at its September 2018 meeting, the Judicial Council approved two forms recommended by the Family and Juvenile Law Committee to implement section 236.14 for minors, *Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-748) and *Order After Request to Expunge Arrest or Vacate Adjudication (Human Trafficking Victim)* (form JV-749).

Analysis/Rationale

The Legislature enacted two criminal record clearing statutes for human trafficking victims in recent years. In 2014, section 1203.49 was added to the Penal Code, authorizing a defendant convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), who has completed a term of probation for that conviction, to petition the court for dismissal relief by establishing through clear and convincing evidence that the conviction was the result of their status as a victim of human trafficking.

Effective January 1, 2017, Penal Code section 236.14 established a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of a nonviolent offense while a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records.

To obtain relief under Penal Code section 236.14, the petition is required to establish: (1) the petitioner was a human trafficking victim at the time the nonviolent crime was committed, (2) the commission of the crime was a direct result of being a human trafficking victim, and that (3) the petitioner 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*.)

Section 236.14 includes both discretionary decisions, such as whether a court may consolidate into one hearing a petition with multiple convictions from different jurisdictions, and mandatory requirements, such as not disclosing the petitioner's full name at a hearing accessible to the public. However, the statute does not consistently specify criteria for courts to consider or procedures to follow. The proposed standard aims to provide courts with further guidance to implement section 236.14.

Policy implications

The committee recommends a standard of judicial administration due to the high level of public interest in receiving guidance on implementation of section 236.14. Two of the eleven commenters recommended that the Council, at a later point, adopt mandatory rules of court and statewide forms. However, the committee determined that statewide forms would be limited in their ability to provide guidance on implementation, and that the mandatory provisions of a rule of court would be premature at this time.

The committee received a significant number of comments from organizations serving or led by human trafficking victims, recommending additional guidelines intended to ease the vacatur process for petitioners. While the committee acknowledges the hardships facing human trafficking victims, the committee declines to recommend additional standards at this time absent a legislative directive or judicial interpretation. The committee believes it is prudent for the standard to have a limited scope at this time.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eleven comments were received. Three commenters agreed with the proposal, four commenters agreed with the proposal if modified, and four commenters did not indicate a position. The committee revised the proposed standard in response to some of the comments.

Consolidating arrests and convictions from multiple jurisdictions

Four commenters requested the standard include a procedure to consolidate hearings requesting vacatur relief for arrests and convictions from multiple jurisdictions, with the responsibility for coordinating consolidation tasked to courts or law enforcement. In developing the standard, the

committee carefully considered multiple options regarding the consolidation of multijurisdictional petitions and decided not to develop and recommend statewide standards because, unlike many other court actions involving multiple jurisdictions, Penal Code section 236.14 does not identify who is responsible for the procedural steps to consolidate a multijurisdictional petition. The committee declined to recommend courts take on this role absent a legislative directive.

Courts to take a victim-centered, trauma-informed approach
Five commenters requested that the standard promote a victim-centered, trauma-informed approach by the courts. The committee determined that the comment was more appropriately addressed through judicial training and education and declined to include the recommendation in the standard.

Consolidating adult and juvenile petitions:
Three commenters requested the standard include guidance on consolidating adult and juvenile petitions. The committee declined to develop standards on consolidating adult and juvenile petitions at this time due to the limited scope of the proposed standard.

Additional statutory relief:
The committee received comments requesting additional standards based on the statute, such as allowing petitioners to appear by electronic means and stating that petitioner's statement alone may provide a sufficient basis for granting vacatur relief. The committee determined that while these additional provisions had a statutory basis, some related procedural elements were not clear. The committee decided not to incorporate them into the standard without seeking further public comment.

The committee also received comments requesting a standard directing courts to consider additional relief that will carry out the purposes of the statute. The committee accepted the recommendation and amended the standard.

Notification of probation:
Three commenters requested adding language directing the court to notify probation if the court terminated probation in conjunction with granting relief. The committee determined that the court was in the best position to notify probation and amended the standard.

Setting a hearing date upon filing of the petition:
One commenter expressed concern that a petition could languish if a hearing date was not set upon filing. The committee determined that section 236.14 does not require a hearing if the petition is unopposed and the court does not otherwise deem one necessary, so that setting a hearing date after the initial court review period promotes judicial economy and efficiency.

Specifying nonexclusivity of factors:
A commenter recommended that in the portions of the standard where the court is given guidance on factors to consider, that it be specified that those factors are nonexclusive. The committee agreed with the comment and amended the standard.

Other comments:
The proposal also received one comment recommending that the standard state that documentation of a petitioner's status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite evidentiary hearsay rules. The committee declined the recommendation, finding that section 236.14(m) provided similar guidance.

One commenter suggested amending subdivision (e)(3) of the standard, "Recall or return of court fines and fees, if paid," to include fees paid to collection agencies. The committee declined the recommendation, finding the circulated language sufficient.

One commenter recommended adding a subparagraph to subdivision (e), "Additional relief," to include sealing of the records in the possession of the prosecutorial agencies involved in the arrest or conviction. The committee declined the recommendation, finding it to be a substantive change that would require public comment.

Alternatives considered

As noted, the committee circulated a proposal for optional forms in 2018; it also considered proposing a rule of court. However, absent more definite 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.

Fiscal and Operational Impacts

The proposed standard is nonbinding. It is intended to provide guidance to courts on recommended 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. A court may save costs if it consolidates hearings or grants relief without a hearing.

Attachments and Links

1. Cal. Standards of Judicial Administration, standard 4.15, at pages 6–8
2. Chart of comments, at pages 9–64
3. Link A: Pen. Code, § 236.14, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=236.14&lawCode=PEN*
4. Link B: Invitation to Comment, SPR18-15, Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim), *https://www.courts.ca.gov/documents/SPR18-15.pdf*

Standard 4.15 of the Standards of Judicial Administration is adopted, effective January 1, 2020, to read:

Standard 4.15. Vacatur relief under Penal Code section 236.14

(a) Request to consolidate hearings for 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 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 the petitioner and all of 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 all of the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c).

(4) The court should consider the following nonexclusive list of 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 court; and

(E) The disadvantages of duplicative and inconsistent orders.

(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 Penal Code 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 a hearing is otherwise warranted; or

(C) Deny the petition without prejudice if the petitioner fails to provide the information required by Penal Code section 236.14(b).

(d) Notification

(1) The court should timely notify the petitioner and prosecuting agency of its decisions under subdivision (c)(1).

(2) The court should timely notify the relevant probation department of any decision to terminate probation.

(e) 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, but not limited to:

(1) Sealing or destruction of probation or other postconviction 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;

(4) Sealing of the court file, if warranted under the factors in rule 2.550(d); and

(5) Additional relief that will carry out the purposes of Penal Code section 236.14.

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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

	Commenter	Position	Comment	Committee Response
1.	Bet Tzedek Legal Services by Elyssa Caplan Staff Attorney, Clean Slate Project Los Angeles, California	AM	*Bet Tzedek provides free legal assistance to eligible low-income residents of Los Angeles County, regardless of their racial, religious, or ethnic background. Bet Tzedek's Employment Rights Project litigates and advocates on behalf of human trafficking survivors. In 2018, Bet Tzedek launched the Clean Slate Project to assist survivors of trafficking in filing vacatur petitions. This sub-population of our clients isdirectly impacted by the Judicial Council proposal at issue. Thus, Bet Tzedek's experience in creating and implementing the Clean Slate Project gives us critical information about the real-life experiences of trafficking victims and how the proposed comments and suggested implementations will impact survivors as they navigate the vacatur process. To date, Bet Tzedek has found that securing this relief for survivors is logistically challenging and time- consuming, and that given current procedural hurdles, many trafficking survivors are not willing to pursue this form of relief. Bet Tzedek hopes that the Judicial Council's continued work on this issue will put into place the framework necessary so that survivors are afforded meaningful access to the vacatur process. **Response to Request for Specific Comments** In 2018, Bet Tzedek provided substantive comments to the Judicial Council when it first requested comments on Penal Code 236.14. Bet Tzedek was disappointed to see that the Judicial Council chose not to adopt the standard forms it proposed in 2018 and that the Council chose not to adopt rules of the Court. Nevertheless, Bet Tzedek	No response required. No response required.

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

			would like to thank the Judicial Council for continuing to review 236.14 filings and procedures in 2019. Bet Tzedek believes that taking the initial step of providing guidance to the Courts through the California Standards of Judicial Administration indicates movement in a positive direction. Bet Tzedek believes the outlined guidance, with some additional provisions that we propose below, is an important step toward allowing victims of human trafficking to seek relief under Penal Code 236.14. However, to be clear, in response to the Council's first specific request for comment on the question "does the proposal appropriately address the stated purpose," the answer is no. Bet Tzedek believes that this proposed guidance should be viewed by the Judicial Council as a first step only and encourages the committee of appointed experts to continue the work of promulgating forms and rules for 236.14 in 2020 and beyond. Penal Code 236.14 is a complex provision with statutory language that was designed to be more fully developed at various implementation stages. Given these complexities, it makes sense that full implementation by the Judicial Council would be a multi-year process informed by on-the-ground learning. Additionally, Bet Tzedek wants to directly respond to the Committee's decision to propose a nonbinding Standard of Judicial Administration rather than a mandatory Rule of Court. Bet Tzedek believes that at this stage of learning on 236.14, implementation of a Standard of Judicial Administration may be appropriate. However, it urges the Court to work toward standardized forms	The committee intends to continue tracking further developments around the implementation of Penal Code section 236.14, including whether rules of court or forms may be appropriate at a later time.

			and mandatory court rules based on learning that Bet Tzedek hopes the Council will engage in during the next few years. To this end, Bet Tzedek's first recommendation is that the Judicial Council ensure that the committee of experts convened to address Judicial Council's implementation of Penal Code 236.14 continue, with the Committee's end goal being to publish final forms and mandatory rules for 236.14. Further, Bet Tzedek requests that attorneys and/or judges with expertise in human trafficking cases and the complex trauma involved be appointed to this ongoing Committee. Therefore, Bet Tzedek requests that as the Committee continues its work, the list of those appointed to the Committee be released, the Council solicit input about additional appropriate members, and that it adds additional members if needed. **Consolidation Across Different Jurisdictions** Bet Tzedek strongly urges the Judicial Council to reconsider the Committee's position that it was uncertain if "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." Under 236.14(e), the Legislature gave explicit guidance to the Courts that petitions can be consolidated. Given the explicit statutory language that allows for this in 236.14(e), the authority granted by the statute is clear. It is merely the process that must	A full list of advisory committee members is available here: https://www.courts.ca.gov/documents/crimcom.pdf More information about nominations is available here: https://www.courts.ca.gov/4650.htm The committee will track further judicial interpretation or legislative direction about the process required to consolidate multi-county petitions.

			be developed by the Court to receive the court files and the agreements of the parties for consolidation. Considering the complexity of the process of attempting to vacate convictions from various counties, Bet Tzedek asks the Judicial Council Committee to review its conclusion "not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties." The Committee's own assessment and discussion highlights the complexities of consolidating petitions. As the committee explains, "[i]t would be difficult operationally for one petition to include multiple arrests and convictions from different jurisdictions because of the challenges of 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 ...." It is exactly because of such difficulties and the complexity of the process that the Judicial Council's guidance is necessary. For example, while Bet Tzedek's Clean Slate Project is just beginning, each of our current clients have arrests and/or convictions in multiple jurisdictions. In other words, none of our clients have convictions in only one jurisdiction, which serves to illustrate the importance of consolidation best practices to allow survivors meaningful access to this relief. At present, clients must travel to multiple courthouses and engage in multiple hearings - each presenting an opportunity for re-traumatization. This is costly and time-consuming	The committee carefully considered multiple options regarding statewide standards on the consolidation of multi-jurisdiction petitions and concluded that it was not appropriate here because, unlike many other court actions involving multiple jurisdictions, Penal Code section 236.14 does not identify who is responsible for or authorized to take the procedural steps to consolidate a multi-county petition. The committee acknowledges the hardships facing human trafficking victims but declines to recommend courts take on this role absent a legislative directive.

			for both petitioners as well as the court system, and most importantly, does not best serve these clients with a trauma-informed perspective. Bet Tzedek hopes this information will help to further educate the Committee on this difficult issue and inspire creative solutions from the Judicial Council that best support victims. Furthermore, the authority given the Courts to consolidate matters is an explicit recognition of the complex and very special nature of trafficking crimes and the Legislature's concern with the increased trauma on victims as well as the costs to the Courts in hearing multiple petitions.[1] The Committee's decision therefore fails to consider who should bear the burden of dealing with those complexities. Should it be the Courts and Law Enforcement Agencies, who criminalized trafficking victims? Or should it be the petitioner, who because of his or her victimization now must go through the arduous process of vacating arrests and/or convictions, often in multiple jurisdictions throughout California? As noted above, the legislature has already answered the question: the Courts and Law Enforcement should bear the burden, not the victims. [1] In the fiscal analysis of SB 823, the Committee highlights that if the court must hold a hearing .... for illustrative purposes, 100 such hearings would result in a cost of $167,000 for two-hour hearings, and $670,000 for full-day hearings. Given the cost to the courts in holding multiple hearings, it behooves Judicial Council to create a streamlined process for consolidation, even if	

			it initially entails a financial investment into a new system. **Suggested language:** Add as new (a) (a) Requests to consolidate arrests and convictions that occurred in California Jurisdictions (1) The court shall allow the filing of a single petition requesting vacatur relief under Penal Code Section 236.14(a) for multiple arrests and convictions that occurred anywhere in the jurisdiction of California courts in accord with the explicit statutory authority granted in 236.14(e). This shall be accomplished through a process that does not create undue burden for the petitioner but asks the Courts to ensure that files are properly transferred when necessary and that the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c), timely respond to request for stipulation for consolidation. Bet Tzedek appreciates Judicial Council's review of the authority that in other contexts requires several procedural steps to transfer a case. These procedures place the burden on the petitioner. However, there are two important factors that make the transfer and consolidation process distinct for trafficking survivors. The first is that the petitioner is a victim. The second is that there is an explicit statutory process outlined, while in	The committee declines to make the suggested changes for reasons stated above. Please see response above.

			other provisions, no such statutory process exists.[2] Therefore, the other situations are not strong precedent or comparable contexts. Bet Tzedek proposes that the Judicial Council consider that if the court has the ability to timely notify the petitioner and prosecuting agency of its decisions under subdivision (c)(l), as is recommended in the Proposed Standards of Judicial Administration, then the Courts too can be provided guidance on how they can notify the appropriate prosecuting agencies of the desire to consolidate the cases and provide a timeline for response. Therefore, Bet Tzedek proposes the following updated language to (c)(2). [2] Bet Tzedek believes the statutory authority for inter-county probation transfers under Penal Code 1203.9 and its related Rules of Court (as well as other California Rules for Change of Venue) considered by the court merely serve to highlight that what is proposed and legislated in Penal Code 236.14 is completely different and not at all in line with the requirements of these provisions where an explicit process was outlined in the statute. **Suggested Language:** (2) The court must timely notify the petitioner and prosecuting agency of its decision under subdivisions (c)(l). If the petitioner has requested consolidation of arrests and/or convictions that occurred in the same county or other California jurisdictions, the Court should implement a consolidation process without placing an undue burden on the victim	The committee declines this suggested change for reasons stated above.

			that streamlines the courts' decision-making on this issue in a timely manner. **Factors to Consider When Consolidating Hearings** Bet Tzedek appreciates the guidance provided by the Judicial Council in section (a)(4), which lists factors the court can consider when deciding whether to consolidate a hearing. To ensure the court properly considers the re-traumatization and re-triggering that can occur for victims in this process, Bet Tzedek suggests the below additions. **Suggested Language:** To (a)(4) add: (F) Promotion of a victim-centered, trauma-informed approach (G) The interest of the Court in creating a just result **Request to Consolidate Arrests and Convictions that Occurred in the Same County** Bet Tzedek was happy to see that Judicial Council suggested in its proposed guidance that a court "should allow the filing of a single petition .... for multiple arrests and convictions that occurred in the same county." Bet Tzedek fully supports the proposed guidance in (a)(l) and (a)(2) but hopes the "should" can be changed to "shall." As Bet Tzedek indicated in its 2018 comments, the approach proposed by the Council at that time only allowed courts to consolidate the hearings on separate petitions into one hearing. The option of	The committee declines the suggestion, as these concerns would be better addressed through judicial training and education. Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of "should" instead of the mandatory "must" used in the rules. The committee declines the suggestion as a standard of judicial administration provides a more prudent approach overall at this time.

			consolidating the hearing, but not the filing of the petition, defeated the intent of Penal Code 236.14. Although Bet Tzedek supports the Council's suggested language in (a)(l) and (a)(2), Bet Tzedek believes the guidance outlined in (a)(3)(A-B) should be removed. Section (a)(3)(A-B) indicates a court can require (1) an agreement between the petitioner and **ALL** (emphasis added) the involved state or local prosecutorial agencies to consolidate the hearing or (2) documentation that states whether any of the involved state or local prosecutorial agencies intend to file an opposition. The proposed standard of judicial administration in (a)(3)(A-B) suggests a court may require this documentation but provides no additional guidance as to how the court should secure such documentation. A lack of any guidance in the proposed Standard of Judicial Administration means that the petitioner in these cases is likely to be asked to secure this documentation prior to a consolidation being granted. This places an unreasonable burden on the petitioner to conduct extensive outreach and creates a situation where it would have been better for the victim petitioner to file petitions in numerous different courts as compared to trying to negotiate these agreements. If the Council keeps the guidance as proposed, advocates are in the same place they have been for the last two years where it is impossible to know whether it is best to advise a victim petitioner to file for consolidation if the arrests and convictions occurred in the same county or file in each of the courts, as the determination is still based on the responsiveness of agencies outside the petitioner	The committee declines to recommend that a specific entity take on this role absent a legislative directive.

			victim's control. The proposed Standard of Judicial Administration gives the Court no additional information on how to best secure this information and clarifying this process is essential to the effective implementation of 236.14. Under Penal Code 236.14, petitioners are responsible only for serving petitions on the state and/or local prosecuting agency that was responsible for the conviction or had jurisdiction over the arrest. The statutory language in Penal Code 236.14 specifically requires that: "The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief." This notice process and certification from the petitioner should be enough to apprise the relevant agencies of the filing of the petitions if a petitioner provides proof of service that occurred 45 days prior to the consolidation request. As is suggested in (a)(3)(C), a court should be able to find this sufficient to consolidate the arrests and convictions in the same county with proof of this notice. Bet Tzedek presumes that our law enforcement partners will not find this sufficient, but we would request the Council shift this burden to the Courts and law enforcement agencies and develop a	The committee declines to recommend statewide standards on this issue at this time absent further legislative direction.

			concrete solution for how a streamlined agreement between the parties can be secured. Until then, Bet Tzedek urges the Council to adopt (a)(l-2) and (a)(3)(C) for its Standards of Judicial Administration and suggest a process for the (a)(3)(C) provision. Bet Tzedek defers to Judicial Council's expertise to suggest language in this area. Bet Tzedek recommends updating the proposed language as highlighted below. **Suggested Language:** Remove (a)(3)(A-B) and replace with an updated victim-centered guidance on a process to secure consent for consolidation between parties in a streamlined manner. Update (a)(3)(C) with the following language: (A) ~~(C)~~ Proof of service of the request to consolidate hearings 45 days prior to consolidating the hearings, on the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c). **Juvenile Petitions** As it did in 2018, Bet Tzedek again requests that, since many trafficking survivors have both juvenile and adult arrest and conviction records, the Judicial Council further examine how the process can be better coordinated and streamlined with the juvenile court system. No additional guidance was provided by the Council on this issue. For example, Bet Tzedek would propose clarifying that juvenile arrests can be cleared	The committee declines to make the suggested changes for reasons stated above. The committee declines to recommend statewide standards on coordinating adult and juvenile petitions at this time.

			through the adult petition process and do not have to be done through the juvenile court. In addition, it would be beneficial to propose a system that enables courts to coordinate the sealing of juvenile convictions at the same time as adult petitions. **Confidentiality** Bet Tzedek is appreciative of the Council's proposed standard to protect the 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. Providing this guidance lets Bet Tzedek and other advocates assure their clients that this process is confidential from the very beginning, easing the practical and emotional burdens on survivors when they choose to file vacatur petitions. Bet Tzedek believes the proposed guidance is consistent with the explicit statutory language and legislative intent and we agree with the guidance. However, Bet Tzedek believes that given the clear legislative language in 236.14, the Judicial Council could propose a rule, not merely a Standard for Judicial Administration. Bet Tzedek worries that without a court rule or standardized forms that instruct that the petition and related court records should be designated confidential at filing, errors will occur, and petitions filed will not receive this appropriate status. Without a rule or court forms, the burden again falls on the petitioner to advocate to make sure individual courts follow the proposed guidance in the Standards of Judicial Administration.	No response required. Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of "should" instead of the mandatory "must" used in the rules. The committee declines the suggestion as a standard of judicial administration provides a more prudent approach overall at this time.

			Initial Court Review and Orders Bet Tzedek thanks the Judicial Council for proposing guidance in (c)(l)(A) to the courts that emphasizes that if the prosecuting agencies file no opposition within 45 days from the date of service and the petition meets the requirement, relief can be granted without a hearing. Bet Tzedek believes that guidance in (c)(l)(A-B) is consistent with the statutory and legislative intent. Given the trauma that trafficking survivors face in returning to court after they have been arrested and convicted during the trafficking experience, Bet Tzedek emphasizes how important it is that courts understand and be trained on this as standard practice. Bet Tzedek further emphasizes that if a Court sets a hearing, it should proceed in a trauma-informed and victim-centered manner, given the subject of these petitions.	The committee believes that these concerns would be better addressed through judicial training and education.
			Bet Tzedek believes that because of the difficulty victims face in appearing in court, proposed guidance should also highlight the explicit statutory authority to appear telephonically and provide courts additional encouragement to proactively notify petitioner of this right if a hearing date is set. This is important because many trafficking victims have left the state of their trafficking for safety reasons or trauma reasons and coming back can be a barrier to applying for relief.	While this suggestion is based on section 236.14, the committee determined that some some related procedural elements are not clear. Accordingly, the committee decided not to incorporate them into the standard without seeking public comment.
			Other additional guidance the Judicial Council could provide in its Standard of Judicial	While this suggestion is based on section 236.14, the committee determined that some some related procedural elements are not clear.

			Administration regards the documentation required by the petitioner to meet the requirements for relief. The statutory language of Penal Code 236.14(m) is clear that "Official documentation shall not be required for the issuance of an order described in subdivision (a)." Since trafficking by its nature is a hidden crime, and the exploitation of a victim can go on for years without a victim being identified, often a victim petitioner seeking relief under 236.14 will have no documentation except his or her personal statement about victimization and the crimes he or she was forced to commit. Since part of the legislative intent of 236.14 is to correct a mistake of the justice system in arresting and prosecuting a victim, it is important to highlight to Courts that victims' statements alone are sufficient proof for a petition to be granted. Finally, although no official documentation is required, the Standards of Judicial Administration should make clear that documentation of a petitioner's status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite hearsay rules given the statutory language in 236.14(m). **Suggested Language:** Initial court review and orders Move (2) to (4) and insert (2) No official documentation is required to support a petition for relief under Penal Code 236.14. The court should find, if the petitioner's written statement of the facts of the matter	Accordingly, the committee decided not to incorporate them into the standard without seeking public comment. The committee declines the suggested change as section 236.14(m) provides similar guidance. The committee declines to make the suggested changes for reasons stated above.

			is credible, that his or her statement alone is sufficient to find that the petitioner meets the requirements for relief. (3) A court should review any official documentation of a petitioner's status as a victim of human trafficking issued by federal, state or local agencies in accord with 236.14(m), despite court hearsay rules. Finally, although Bet Tzedek thanks Judicial Council for providing clear guidance that the courts must timely notify petitioner and prosecuting agency of its decisions, Bet Tzedek is disappointed that no guidance is provided to help ensure that courts notify the relevant agencies of a vacatur order so that the petitioner victim's records are cleared in a timely manner. One of the greatest hurdles for petitioners seeking this relief is ensuring that vacatur orders are implemented, and guidance from Judicial Council is necessary. Bet Tzedek defers to Judicial Council expertise in suggesting language in this area but believes that any enacted Standard of Judicial Administration adopted must provide this additional guidance to the courts. Bet Tzedek suggests that a prescriptive 30-day timeframe be required. **Additional Relief** Bet Tzedek thanks Judicial Council for its recommendations for additional relief listed under section (d) of the proposed standard. Bet Tzedek is especially thankful for the	The committee's position is that the statutory language is sufficient and declines to modify the proposal as suggested. Per California Rules of Court, rule 1.5(c), the nonbinding nature of standards is indicated by the use of "should" instead of the mandatory "must" used in the rules. The committee declines the suggestion as a standard of judicial

			guidance that the court may recall or return court fines and fees if paid. For victims struggling with rebuilding their lives, a court proactively returning fines and fees can help victims feel like the system is finally correcting a past wrong. This guidance is especially important given the Supreme Court decision in *Nelson v. Colorado,* 137 S. Ct. 1249 (2017). In this case, the Supreme Court held that any fees, fines, or surcharges collected must be returned to an individual once their conviction is vacated or they are exonerated. Given this Supreme Court decision, Bet Tzedek suggests that the term "may" be changed to "shall." Bet Tzedek suggests the following additions to the list of additional relief under section (d). **Termination of Probation** 236.14 allows victims to petition for relief while currently on probation. Therefore, if the petition is granted, Bet Tzedek suggests that in addition to the court sealing or destroying probation or post-conviction supervision agency records, the court also be instructed to notify the relevant probation office of the termination of probation after the grant of this relief. **Suggested Language:** (d) Additional relief (1) Notify probation agency of termination of probation and sealing or destruction of probation or other post-convictions supervision agency records related to the convictions.	administration provides a more prudent approach overall at this time. The committee agrees with this suggestion and has modified the proposed standard accordingly.

			Reguest for Additional Action Court May Take The intent of the Legislature and the clear statutory language of Penal Code 236.14(r) allows a Court to grant "additional relief to carry out the purposes of this section." This explicit language should be included in Judicial Council's Standard of Administration. **Suggested Language** (d) Additional relief (5) Any additional relief the Court believes carries out the purposes of Penal Code 236.14.	The committee agrees with this suggestion and has modified the proposed standard accordingly.
2.	Coalition to Abolish Slavery & Trafficking (CAST) by Stephanie Richard, Policy & Legal Services Director Los Angeles, California	AM	*Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. [I]n response to the Council's first specific request for comment on the question "Does the proposal appropriately address the stated purpose?", our answer is an unequivocal "no." This proposed guidance should only be viewed as the Council's initial effort to address this admittedly complex issue. We encourage the Committee of appointed experts not to abandon work on developing forms and rules for implementing Cal PC 236.14, recognizing that the statute itself contemplates that its provisions will likely need to be implemented in stages. Given this reality, it makes sense that full implementation of the law by the Judicial Council will be a multi-year process, continuously informed by the experiences of survivor petitioners and their advocates, as well as the Courts and Law Enforcement Agencies (LEAs).	Please see the responses to the comments of Bet Tzedek above.

			CAST also wants to take this opportunity to directly respond to the Committee's decision to propose a non-binding Standard of Judicial Administration rather than a mandatory rule of court. While CAST believes that at this stage in the process of Cal PC 236.14 implementation, a Standard of Judicial Administration may be the appropriate vehicle. However, it urges the Council to work towards standardized forms and mandatory court rules based on knowledge acquired during the next few years. To this end, CAST's first recommendation is that the Judicial Council ensure that the designated Committee of experts continues its work with the ultimate goal being to publish final forms and court rules for implementing Cal PC 236.14. CAST further requests that attorneys and/or judges with expertise in human trafficking cases and the associated physical and emotional trauma endured by survivors be appointed to the Committee. CAST also requests that the list of committee members be publicly released and that the Council solicits input from stakeholders regarding additional appropriate members, adding them to the Committee as needed. **Consolidation Across Different Jurisdictions** Starting with the premise that the Judicial Council should commit to a long-term goal of developing forms and additional court rules/ guidance, CAST makes two requests of the Committee of experts. First, that the Committee review its conclusion that "[i]t would be difficult operationally for one petition to include multiple arrests and convictions	A full list of advisory committee members is available here: https://www.courts.ca.gov/documents/crimcom.pdf More information about the nominations process is available here: https://www.courts.ca.gov/4650.htm Please see the responses to the comments of Bet Tzedek above.

			from different jurisdictions because of the challenges of 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…." Second, that the Committee revisit its decision "not to develop statewide standards on the consolidation of hearings for arrests and convictions that occurred in different counties." It is exactly this complex process where the Judicial Council's guidance is absolutely necessary.	
			The Committee's own assessment/discussion highlights the complexities of consolidating petitions. What the Committee fails to address is who should bear the burden of dealing with those complexities. Should it be the Courts and LEAs, who initially failed to identify a victim of trafficking and, as a result, arrested and criminalized the petitioner? Or should it be the victim petitioner who, solely as a result of this victimization, must now shoulder the arduous process of clearing his or her record often in multiple jurisdictions throughout California?	Please see the responses to the comments of Bet Tzedek above.
			*Under Cal PC 236.14(e), the Legislature explicitly authorized the Courts to allow consolidated petitions. It did so based on the often multi- jurisdictional records of trafficking victims combined with the unique nature of vacating convictions in the trafficking context, where the basis for the relief is that the defendant was not a	Please see the responses to the comments of Bet Tzedek above.

			criminal but a victim.[3] Our own data found that human trafficking victims are arrested **seven times** more frequently for activity directly related to their trafficking than for non-trafficking activity. Sadly, the records show that some victims had been arrested 30 or 40 times in only a few years under their trafficker's control. [3] In its initial comments, CAST highlighted to the Council the disproportionately large number of crimes for which trafficking victims are arrested or convicted solely as a result of their trafficking status. The National Survivor Network, in a survey of its membership, reports that 40% of the respondents were arrested and/or convicted of crimes 9 times of more while they were being trafficked. In light of the foregoing comments, CAST strongly urges the Judicial Council to revisit its determination of "uncertainty" as to whether "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." Given the explicit statutory language in Cal PC 236.14(e) allowing for this process, there is no room for ambiguity. The authority granted by the statute is clear. It is only the **process** that must be developed by the Court to receive the court files and the agreements of the parties for consolidation. In fact, we have had at least two courts consolidate cases from multiple jurisdictions under the explicit authority provided in Cal PC 236.14(e). Thus, the	Please see the responses to the comments of Bet Tzedek above.

			Judicial Council's conclusion that courts may not have this authority is inconsistent with judicial practice. Moreover, as the original proponent for this language, and as the relevant legislative history demonstrates, CAST is confident that thinking creatively, the Judicial Council can design a system for consolidating vacatur cases that is well within the statutory authority provided.[4] [4] The June 20, 2016 Assembly Committee on Public Safety Analysis highlights how SB 823 "takes a novel approach of setting up a statutory framework for vacating convictions for a particular class of individuals. Essentially, this bill creates parity between human trafficking victims and those individuals who are found factually innocent of crimes they never committed." Further, it highlights how the motion is novel in that "the remedy is actually more forceful than an expungement. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. Under current California law and criminal procedure, motions to vacate a conviction are generally done through the appellate process." Indeed, Cal PC 236.14(e) as drafted encourages the Council to exercise creativity in developing associated forms and rules precisely because this is "first of its kind" authority granted to the courts based on the very special nature of trafficking crimes and the Legislature's concern with the increased trauma on victims, as well as the costs to the courts, from hearing multiple petitions.[5] Therefore, in any enacted Administrative Court Guidance, the Judicial Council must, at a minimum, recognize the statutory authority allowing for consolidation of multiple cases originally brought in the same county (as already	Please see the responses to the comments of Bet Tzedek above.

			proposed), as well as those from multiple jurisdictions throughout California. [5] In the fiscal analysis of SB 823, the Committee highlights that if the court must hold a hearing… for illustrative purposes, 100 such hearings would result in a cost of $167, 000 for two-hour hearings, and $670,000 for full-day hearings. Given the cost to the courts in holding multiple hearings, it behooves Judicial Council to create a streamlined process for consolidation, even if it initially entails a financial investment into a new system. Suggested language: Add as new (a) (a) Requests to consolidate arrests and convictions that occurred in California Jurisdictions 1) The court shall allow the filing of a single petition requesting vacatur relief under Penal Code Section 236.14 (a) for multiple arrests and convictions that occurred anywhere in the jurisdiction of California courts in accordance with the explicit statutory authority granted in 236.14(e). This shall be accomplished through a process that does not create an undue burden for the petitioner but puts the burden on the Courts to ensure that files are properly transferred when necessary and that the involved state or local prosecutorial agencies, as defined in Penal	The committee declines to make the suggested changes for reasons stated above.

			Code section 236.14(c), timely respond to requests for stipulation for consolidation. While CAST appreciates the Judicial Council's discussion of court procedures for transferring cases in other contexts, they are inapplicable to the current situation. Petitioners in this case are victims; there is no justification for placing the procedural burdens on them as in the cited examples. Moreover, in this setting the law specifically empowers the court to consolidate cases via an explicit statutory process.[6] Accordingly, the referenced cases have no precedential value nor do they provide informative models for the Council's consideration. [6] CAST believes the statutory authority for inter-county probation transfers under penal code section 1203.9 and its related rules of court and other CA rules for change of venue, considered by the court merely serve to highlight that what is proposed and legislated in PC 236.14 is completely different and not at all in line with the requirements of these provisions where an explicit process was outlined in the statute. Noting the Judicial Council's Subdivision c (1) process, CAST suggests that the same method be employed for subdivision c (2). In c (1), the Council presumes that the court has the ability to timely notify the petitioner and prosecuting agency of its decisions. If that is the case, there is no reason the Counsel cannot provide guidance on how the court can notify the appropriate prosecuting agencies of a desire to consolidate cases and provide timelines for agency response in	Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			Subdivision c (2). CAST thus proposes the following updated language to c (2). **Suggested Language:** (2) The court must timely notify the petitioner and prosecuting agency of its decision under subdivisions (c)(1). If the petitioner has requested consolidation of arrests and/or convictions that occurred in the same county or other California jurisdictions, the Court should implement a consolidation process without placing an undue burden on the victim that streamlines the court's decision-making on this issue in a timely manner. **Factors to Consider When Consolidating Hearings** CAST appreciates the guidance provided by the Judicial Council in section (a)(4) that lists factors the court can consider when deciding whether to consolidate a hearing. To ensure the court properly considers the re-traumatization and re-triggering that can occur for victims in this process, CAST suggests the following additions. **Suggested Language:** **To (a)(4) add:** (F) Promotion of a victim-centered, trauma-informed approach. (G) The interest of the court in creating a just result.	The committee declines to make the suggested changes for reasons stated above. Please see the responses to the comments of Bet Tzedek above.

			Request to Consolidate Arrest and Convictions that Occurred in the Same County CAST was pleased to see that in its proposed guidance the Judicial Council suggests that a court "should allow the filing of a single petition….for multiple arrests and convictions that occurred in the same county." CAST fully supports the proposed guidance in a (1&2) but requests that the permissive nature of the language be made mandatory, i.e., "should" becomes "shall." As CAST indicated in its 2018 comments, the approach proposed by the Council at that time only allowed courts to consolidate hearings into one event upon the filing of separate petitions. The option of consolidating the hearing, but not the filing of the associated petition, defeats the purpose and intent of Cal PC 236.14. Indeed, in CAST's experience, all of the petitions filed to date have been granted without a hearing. Although CAST supports the Council's suggested language in a (1&2), CAST believes the guidance outlined in (a)(3)(A-B) should be removed. These sections authorize a court to require (1) an agreement between the petitioner and **ALL** (emphasis added) the involved state or local prosecutorial agencies to consolidate the hearing or (2) documentation stating whether any of the involved state or local prosecutorial agencies intend to file an opposition to the petition. However, the section provides no guidance as to **HOW** the court should secure it. This lack of guidance likely means that the petitioner will be asked to secure this	Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			documentation prior to consolidation being granted. Conducting this extensive outreach places an unreasonable burden on the petitioner. LEAs are often unresponsive. In those cases, which are impossible to predict prior to engaging the actual LEAs, CAST's experience shows that it would have been better for the victim petitioner to forgo any attempt at consolidation. It would have been easier for the petitioner to file petitions in all the different courts as opposed to trying to negotiate the requisite agreements. If the Council keeps the guidance as proposed, advocates are in the same place they have been for the last two years, during which it has been impossible to know whether to advise a victim petitioner to file for consolidation or file separately in each of the courts, as the determination is still based on the responsiveness of LEAs outside the petitioner victim's control. The proposed Standard of Judicial Administration gives a court no additional information on how to best secure this information. Clarifying this process is essential to the effective implementation of Cal PC 236.14. Under Cal PC 236.14, petitioners are only responsible for **serving** petitions on the state and/or local prosecuting agency that was responsible for the relevant conviction or had jurisdiction over the arrest. The statutory language in Cal PC 236.14 specifically requires that: "The petition for relief and supporting documentation shall be served on the state or local	Please see the responses to the comments of Bet Tzedek above.

			prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief." This notice process, and associated petitioner certification, should be sufficient to apprise the relevant agencies of the filing of the petitions if a petitioner provides proof that service occurred 45 days prior to the consolidation request. As is suggested in a (3)(C), a court should find this time period sufficient to consolidate the arrest and convictions in the same county. While CAST is certain that our law enforcement partners will argue that this time period is insufficient, we believe the Council should shift the burden to the courts and the LEAs to provide a concrete proposal that streamlines the process by which agreement between the parties can be secured. Until then, CAST urges the Council to adopt (a)(1 & 2) and (3)(C) for its Standards of Judicial Administration while suggesting a process for the a (3) A-B provisions. Because the Judicial Council's proposal is meant to guide the courts, it should provide real options in this novel area. CAST defers to the Judicial Council's expertise in suggesting language to meet this goal. CAST recommends updating the proposed language as highlighted below.	Please see the responses to the comments of Bet Tzedek above.

			Suggested Language: Remove (a)(3) A & B and replace with an updated victim-centered process to secure consent for consolidation between parties in a streamlined manner. Update (a)(3)(C) with the following language: (A) ~~(C)~~ Proof of service of the request to consolidate hearings 45 days prior to consolidating the hearings, on the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14(c). **Juvenile Petitions** As included in our 2018 comments, because CAST knows that many trafficking survivors have both juvenile and adult arrest and conviction records, we request the Judicial Council to examine in more detail how the process can be better coordinated and streamlined with the juvenile system. No additional guidance was provided by the Council under the new proposed Standards of Judicial Administration on this issue. For example, clarifying that juvenile arrests can be cleared through the adult petition process, and do not have to be done through the juvenile court process, and further proposing a system that enables the adult court to coordinate sealing juvenile convictions at the same time as adult petitions, would be two very useful procedures. **Confidentiality** CAST is appreciative of the Council's proposed standard to protect the confidentiality of the	The committee declines to make the suggested changes for reasons stated above. Please see the responses to the comments of Bet Tzedek above.

			petition, related filings, court records and confidentiality of the petitioner's identity at the hearing or any other proceedings or filings accessible to the public. Providing this guidance affords CAST and other advocates the opportunity to assure their clients that this process is confidential from the very beginning, easing the practical and emotional burdens on survivors when they choose to file under Cal PC 236.14. CAST believes the proposed guidance is consistent with the law's explicit language and legislative intent and agrees with its substance. However, CAST believes that given the clear language of Cal PC 236.14, the Judicial Council could propose a court rule, as opposed to mere guidance. CAST is concerned that without a court rule or standardized forms requiring confidentiality at the time of filing a petition, errors will occur and petitions will accidentally be made public. CAST has found that the newness of the provision, and court clerks' unfamiliarity with its requirements, has resulted in clerks refusing to accept the initial filings. Without a rule of court or actual forms, the burden once again inappropriately falls on the petitioner to make sure individual courts follow the proposed guidance offered in the Standards of Judicial Administration. **Initial Court Review and Orders** CAST thanks the Judicial Council for proposing guidance to the courts in (c)(1)(A) that emphasizes that if the prosecuting agencies file no opposition within 45 days from the date of service, and petitioner otherwise meets the standards for	Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			vacatur, relief can be granted without a hearing. CAST believes that the guidance in (c)(1)(A-B) is consistent with statutory and legislative intent. Given the trauma that trafficking survivors face in returning to court after having been arrested and convicted as a result of their trafficking experiences, CAST would like to emphasize how important it is that courts understand and receive training on this psychological harm as a matter of course. Moreover, CAST respectfully requests that if a court sets a hearing, it should proceed in a trauma-informed and victim-centered manner, given the sensitive subject matter and emotionally charged nature of these petitions. CAST believes that because of the difficulty victims face in appearing in court, the Council's proposed guidance should also highlight the explicit statutory authority allowing them to appear telephonically. The guidance should further encourage courts to proactively notify petitioner of this right if a hearing date is set. This is important because many trafficking victims have left the state where they were trafficked either for safety reasons or to avoid continuing trauma. Coming back to the jurisdiction can thus be a significant barrier to applying for relief. Other additional guidance the Judicial Council could provide in its proposed Standard of Judicial Administration regards the documentation petitioners need to provide for relief. Cal PC 236.14(m) is clear that "Official documentation shall not be required for the issuance of an order described in subdivision (a)." Since trafficking by	Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			its nature is a hidden crime, and the exploitation of a victim can go on for years without a victim being identified, often a victim petitioner seeking relief under 236.14 will have no documentation except his or her personal statement about victimization and the crimes he or she was forced to commit. Because the legislative intent behind Cal PC 236.14 is to correct a mistake of the justice system in arresting and prosecuting a victim, it is important to explicitly remind courts that victims' statements alone are sufficient proof for a petition to be granted. And, while no documentation of trafficking status is required, the Standards of Judicial Administration should make clear that documentation of a petitioner's status as a victim of human trafficking issued by federal, state, or local agencies can be considered despite evidentiary hearsay rules. **Suggested Language:** <u>Initial court review and orders</u> Move (2) to (4) and insert (2) No official documentation is required to support a petition for relief under PC 236.14. The court should find, if the petitioner's written statement of the facts of the matter is credible, that his or her statement alone is sufficient to find that the petitioner meets the requirements for relief. (3) A court should review any official documentation of a petitioner's status as a	The committee declines to make the suggested changes for reasons stated above.

			victim of human trafficking issued by federal, state or local agencies in accord with 236.14(m), despite evidentiary hearsay rules. Finally, although CAST thanks the Judicial Council for providing clear guidance that the courts must timely notify both the petitioner and the prosecuting agency of its decisions, CAST is disappointed that no guidance is provided to ensure that courts immediately notify the relevant agencies of a vacatur order so that the petitioner victim's records are actually cleared in a timely manner. In CAST's experience, one of the greatest hurdles for petitioners seeking this relief is implementation of a vacatur order. More than one year after orders for relief have been granted under Cal Pc 236.14, CAST still has clients whose records have not been cleared. CAST has engaged in long-term advocacy with individual courts to correct this error. However, based on CAST's on-the-ground experience, which has been both time consuming and devastating for the victims it serves, guidance from the Judicial Council on implementation of vacatur relief is essential. CAST defers to the Judicial Council and its expertise in suggesting language in this area, but believes that any Standard of Judicial Administration must provide this additional guidance to the courts. CAST suggests that a prescriptive 30 day timeframe be required. **Additional Relief**	Please see the responses to the comments of Bet Tzedek above.

			CAST thanks Judicial Council for its recommendations for additional relief listed under section (d) of the proposed standard. CAST is especially thankful for the guidance expressly allowing the court to recall or return court fines and fees already paid. For victims struggling with rebuilding their lives, a court proactively returning fines and fees can help victims feel that the system is finally correcting a past wrong. This guidance is especially important given the U.S. Supreme Court Decision in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). In that case, the Court held that any fees, fines, or surcharges collected must be returned to an individual once their conviction is vacated or they are exonerated. Given this decision, CAST suggests that the permissive term "may," be changed to the mandatory "shall." CAST further suggests the following additions to the list of relief options enumerated in section (d). **Termination of Probation** Cal PC 236.14 allows victims to petition for relief while currently on probation. If the petition is granted, CAST suggests that in addition to the court sealing or destroying probation or post-conviction supervision agency records, the court also be instructed to notify the relevant probation office of the termination of probation. **Suggested Language:** <u>(d) Additional relief</u>	Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			(1) Notify probation agency of termination of probation and sealing or destruction of probation or other post-convictions supervision agency records related to the convictions **Request for Additional Action Court May Take** The intent of the legislature and the clear language of Cal PC 236.14 (r) allow a Court to grant "additional relief to carry out the purposes of this section." This explicit language should be included in the Judicial Council's Standard of Administration. **Suggested Language** (d) Additional relief (5) Any additional relief the Court believes will carry out the purposes of Cal PC 236.14.	Please see the responses to the comments of Bet Tzedek above.

3.	HEAL Trafficking By Hanni Stoklosa, MD, MPH Executive Director	AM	*HEAL Trafficking is a united group of survivors and multidisciplinary professionals dedicated to ending human trafficking and supporting its survivors, from a public health perspective. HEAL Trafficking is a global network of over 2500 professionals in 35 countries who work with and advocate for survivors of human trafficking. Over 600 of our network of esteemed professionals experienced in caring for trafficking victims are living and working in California. HEAL Trafficking believes that efforts to eliminate trafficking in persons must incorporate a public health perspective. **Response to Request** *Victims of human trafficking experience physical and mental health issues caused by trafficking. These include depression, anxiety, insomnia, social phobias, and symptoms of post-traumatic stress disorder (PTSD), as well as physical conditions such as headaches, gastrointestinal disorders, musculoskeletal injuries, sexually transmitted infections, and pelvic pain. *We have sometimes been called upon to provide services for trafficking survivors who are involved with the court system ─ such as when they cooperate in the investigation and/or prosecution of their traffickers, or in civil cases against traffickers. In these patients, we have observed an increase in mental and physical symptomatology caused by the intense stress of the ongoing legal cases. These symptoms include nausea, gastrointestinal reflux, and diarrhea, worsening of	No response required. No response required. No response required.

			headaches, increased depression and anxiety, and exacerbation of insomnia and nightmares. The legal process requires these patients to revisit their prior traumas, and reignites intense fear about retaliation from traffickers for escaping. We have witnessed worsening of physical and mental health symptoms when patients are navigating legal and even bureaucratic hurdles. While the end result of vacating convictions is a good one for victims, we want the Judicial Council to understand that the process of achieving that result may be traumatic for victims**. We therefore urge the Council to adopt forms and procedures that minimize the trauma of the process**. Any stressor or activity that results in victims feeling coerced, abused or helpless can be the basis for re-traumatization and result in an increase of symptoms such as nightmares, flashbacks, erratic emotions, fear, despondency, increased anxiety and/or depression, physical symptoms and suicidal ideation. We advise, therefore, that **victims' privacy and safety be protected as fully as the Court system allows**. As noted, even bureaucratic hurdles can trigger traumatic symptoms. This is especially true when victims are required to provide details and documentation about their trafficking experience. We recommend that this be minimized, and that repetition not be required. The simpler the forms, the better they will be in terms of avoiding re-traumatization.	The committee believes that these concerns are better addressed through judicial training and education. The committee has included confidentiality measures in the proposed standard. .

			We recommend consulting with trafficking survivor groups before considering the implementation of any requirements to physically visit a courthouse. Visiting a courthouse may trigger a re-visiting of trafficking trauma, especially revisiting the very courthouse where a trafficked person was convicted.	The proposed standard does not require a physical visit to a courthouse.
			We are aware that trafficking victims often have multiple arrests and convictions, and understand that the vacatur process can take 45 days or more, however anything the Courts can do to streamline this process may improve physical and mental health impacts in-the long-term.	No response required.
			Finally, if a Court orders convictions to be vacated, it is extremely important that the records be, in fact, cleansed. Trafficking victims have difficulty trusting anyone, let alone systems that they believe have failed them in the past. If a Court orders a conviction to be vacated, and it still remains on a victim's record, this can trigger new trauma, trust deficits, and prevent them from rebuilding their lives and thriving.	The committee believes that these concerns are better addressed through court clerk training and education.
			Trafficking victims have a long journey to healing and the court system can exacerbate their underlying trauma. **We urge the Council to take these impacts into account and implement a trauma-informed, victim-centered approach to dealing with these difficult issues.** Thank you for considering our comments.	The committee believes that these concerns are better addressed through judicial training and education.

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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

4.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee - Joint Rules Subcommittee	A	SPR19-15: Criminal Procedure: Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15) JRS Position: Agree with proposed changes. The JRS notes that the proposal is required to conform to a change of law. The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Results in additional training, which requires the commitment of staff time and court resources.	No response required.

5.	Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender Los Angeles County Alternate Public Defender By Erika Anzoategui, Acting Alternate Public Defender	N/I	We are concerned that the non-binding standard of judicial administration assumes that much of the process will occur through the clerk's office and in chambers, off the record. We are particularly concerned that, without a court date, prosecutorial agencies will not timely file oppositions, if they have any. This is problematic because, under Penal Code section 236.14, subdivision (d), the statute requires the petition be deemed unopposed if no opposition is filed within 45 days. Should more than 45 days elapse, the petitioner could potentially lose an opportunity to advance his or her petition. Even if there no opposition, petitions could languish ~~if there is~~ no date by which they must be addressed. We propose that, unless the *petitioner* prefers otherwise, Penal Code section 236.14 petitions be filed directly in a courtroom that has jurisdiction over at least one of the cases on which relief is sought. If a petitioner has cases or arrests in other jurisdictions that are also subject to Penal Code section 236.14 relief, they can be ordered to the same courtroom, provided all prosecutorial agencies are served and agree, as per Penal Code section 236.14, subdivisions (c) and (e). We believe the court has the authority under Penal Code section 236.14, subdivision (e), to order in cases from any other jurisdiction, not just cases from the same county. Should the Legislature have wanted to limit cases to those in the same county, it could have so indicated. While certainly this is novel and it will take operational adjustments, the entire purpose of the law is to right the wrongs	Penal Code section 236.14 does not require a hearing if the petition is unopposed and the court does not otherwise deem one necessary. Accordingly, the committee believes judicial economy and efficiency are promoted by not setting a potentially unnecessary hearing date at the time of filing. Please see the responses to the comments of Bet Tzedek above. Please see the responses to the comments of Bet Tzedek above.

			done to victims of human trafficking; allowing them to address all of their cases in a single hearing is a step in that direction. **Suggested Changes to Proposed Language:** **Standard 4.15. Vacatur relief under Penal Code section 236.14.** **(a) Request to consolidate arrests and convictions that occurred in a California jurisdiction** CHANGE (1) TO READ: (1) A petitioner who wishes to petition for Penal Code section 236.14(a) relief on multiple arrests or convictions should be allowed to file and request a hearing on all such petitions in the same courtroom, provided that: a. All the arrests or convictions occurred in California; b. One of the arrests or convictions is within the jurisdiction of the courtroom in which the petitioner wishes to file, and C. All the involved state or local prosecutorial agencies, as defined in Penal Code section 236.14, subdivision (c), agree to have a single	Please see the responses to the comments of Bet Tzedek above.

			hearing, as per Penal Code section 23614, subdivision (e). ADD to (a)(4): (F) The importance of a trauma-informed approach to victimized persons. ADD to section (c) new language in italics: 1) *If the petitioner has not requested a court date at the time of filing, then,* after... ADD to (d): 1) Termination of probation or other post-conviction supervision, sealing or destruction of probation or other post-conviction supervision agency records related to the conviction; 2) Recall or return of court fines and fees, including fees paid to collection agencies; 3) Sealing of the records in the possession of the prosecutorial agencies involved in the arrest or conviction, and 4) Any additional relief the court believes effects the purposes of Penal Code section 236.14.	The committee declines the suggestion, as these concerns would be better addressed through judicial training and education. The committee declines this suggestion for the reasons stated above. The committee agrees with this suggestion and has modified the proposed standard accordingly. The committee declines this suggestion as it finds that the proposed language is sufficient. The committee declines the suggested change at this time, because it is a substantive change that requires public comment. The committee agrees with this suggestion and has modified the proposed standard accordingly.

4.	National Survivor Network and Resilient Voices by Nat Paul, Policy Chair	N/I	The NSN is a Survivor Led Program of the Coalition to Abolish Slavery & Trafficking (CAST). In February 2011, CAST launched the NSN to foster connections between survivors of diverse forms of human trafficking and to build a national anti-trafficking movement in which survivors are at the forefront and recognized as leaders. Members of the NSN include survivors with various backgrounds and origins spanning 24 countries. Active members currently reside in over 40 states including 39 in California. The NSN's diverse membership makes it uniquely representative of the myriad of situations experienced by survivors of human trafficking. By connecting survivors across the country, the NSN supports survivors to realize and develop their own leadership and fosters collaboration with others who value their insight and expertise in the field. RV is a survivor-led program of CAST created in 2004. This California specific group of survivors advocates directly upon the needs of California's survivor community. The experiences of RV further enhance the national efforts of the NSN with an in-depth focus on CA advocacy. Currently the membership is 76 individual survivors living in the Los Angeles area. **Response to request:** The NSN and RV would like to first commend the Judicial Council for their consideration of this very serious issue. To address the non-binding factor of the proposals, we believe a non-binding pilot program for implementation that affectively addresses the nuances of implementation to such a	No response required. No response required. No response required.

			process is crucial to allow for growth and education around the complex structural changes being made. This program of working within the framework of implementation in stages would allow for attorneys, judges, courts, Law Enforcement agencies, and petitioner victims and advocates to learn the best practices of this process in an appropriate manner throughout the implementation process. We hope that non-binding process once addressed becomes a binding process moving forward as we learn together these best practices of real-life implementation. **Safety considerations:** In regard to consolidation of charges across jurisdictions we would like to note a few apprehensions we have in regard to the confidentiality of this process, while addressing the complex process of consolidating all charges across the State. Filing a petition in one jurisdiction is far easier for the mental duress of waiting for the long process to take place in multiple jurisdictions. Our concerns around safety are complicated knowing the crimes we were forced into committing as part of our trafficking experience are beyond familiar to our traffickers. Limiting who has access to these petitions is something we strongly support. In that, our traffickers may be a part of a familial trafficking network, a criminal syndicate, or even in some cases Law Enforcement officers. Even if a consolidated case is signed under Jane Doe/John Doe our trafficker and their networks are intricately familiar with crimes we committed through force, fraud or coercion. These networks	No response required.

			may have employees within the system and limiting access to who can see these consolidated cases is crucial for safety of our safety. We trust the court has taken into consideration into the need of the confidentiality of these documents and destructions of records once the petition is approved. We are curious if consideration into files under Department of Children and Families are considered if a conviction history was the reason for a loss of a child and the trafficker's family has custody of the child, how can these issues be resolved with the destruction of documents including conviction records, court records or other pieces? Can a consolidated report be subpoenaed for the purpose of taking a child from a victim of a crime? If a petitioner chose to file before their T-Visa or U-Visa is processed would those convictions and histories be confidential to DHS or ICE? I myself have apprehensions on one consolidated case, albeit a concern for the burden of petitioning in multiple courts across the state is an expensive process that a victim should not have to bear for being misidentified as a victim of a crime. It seems like the onerous of the burden should be upon the system that failed to identify a victim rather than the victim. If a Statewide option is not available is there a uniform process across all jurisdictions of application where a granted petition or a sworn affidavit from that court that can be shared to all additional county seats for additional convictions? Ideally once someone is identified as a victim of a crime that has been granted a petition of vacatur	The committee has included confidentiality measures in the proposed standard. The committee appreciates the comment, but it is beyond scope of the proposal. Please see the responses to the comments of Bet Tzedek above.

			that granting authority should be Statewide and be able to be used to vacate all convictions in the time frame of active trafficking without the need to repeat in all jurisdictions. **Clarification around 45 days:** PC 236.14 states: "The Petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief." When filing bankruptcy, the petition process for the court to notify creditors takes about a week and the court covers said notifications. We are curious how in bankruptcy there is a process set aside for the court to notify creditors but there is not a notice of court filing those additional petitions to Law Enforcement and Prosecutors in other jurisdictions for consolidation of jurisdiction and supporting documents? If the court can file notice to creditors of intent to file bankruptcy within a week of petition filed and resolve bankruptcy within 30 days. It seems like the 45 days for vacatur petition is more than sufficient. On the 46th day if uncontested a petition should be granted as uncontested. If a petition is denied it should be denied without prejudice to allow for additional documentation to be accumulated to attempt again. There is no clarification of "timely" notice should be sent. It seems like notice should be able to be sent within a week of the determination of the	Penal Code section 236.14 does not clearly identify who should coordinate a multi-jurisdiction petition. The statutory language states that courts may grant an uncontested petition. Proposed standard 4.15(c)(1)(C) suggests that a petition be denied without prejudice if the petitioner fails to provide the information required under statute. The committee declines to provide further guidelines on the provision of timely notice.

			petition as reasonable. If approved, there should be a specified timeline as in Bankruptcy of 30 days to complete removal of all records from systems that would ensure a timely notice and removal of all applicable records.	
			Additional Considerations: There is no clarification around juvenile cases as many trafficking charges are mixed between juvenile courts and adult courts. Does the County jurisdiction also have a right to petition for all juvenile convictions that may still be present for vacatur as well?	The committee declines to recommend statewide standards on coordinating adult and juvenile petitions at this time.
			Destruction of all records in wrongful arrests for a victim of crime. If all police records, conviction records, probation records and court records are to be destroyed after vacatur—what becomes of the DNA records and fingerprints? Are these considered records of arrests and convictions being vacated and if so, are they to be destroyed? In the event of protection order of identity and name changes or other legal protections of a victim of trafficking would holding on to such records place hardship onto the victim's identity that would place additional burdens on them that the court would have not considered?	The committee appreciates the comment, but it is beyond scope of the proposal.
			We would like to see clarification around the trauma informed approach to implementation of this policy and would ask for consideration if a telecommunication system is available and be noted in the documentation the petitioner receives as an option for a hearing. We would like to see how confidentiality within this space is defined for	The committee believes that a trauma-informed approach is better addressed through judicial training and education. Penal Code section 236.14(n) allows a court to excuse the petitioner from appearing in person based on a compelling reason. The committee

			a hearing. Is this in a courtroom or in private chambers with only parties able to be present? Or will we be on open display with a potential for our trafficker to be present in the hearing rooms? We would recommend a private hearing in chambers or via phone with only appropriate entities present to protect confidentiality of this process. Is there additional clarification for probation that may still be ongoing? Would the court send orders to the probation offices to inform them of vacatur and the stopping of any ongoing probation?	decided not to incorporate guidelines on appearing telephonically into the standard without seeking public comment. The committee declines to recommend further guidelines on privacy considerations at this time. The committee agrees that the court should notify probation and has modified the proposed standard accordingly.

5.	Office of Los Angeles City Attorney Michael N. Feuer by Anh Troung, Supervising Deputy City Attorney	N/I	**INTRODUCTION AND STATEMENT OF INTEREST** The Los Angeles City Attorney's Office handles all human trafficking vacatur petitions that arise from misdemeanor arrests in the City of Los Angeles. Because these petitions include prostitution-related offenses, we are receiving an increased number of petitions from a variety of sources. Historically, most of the petitions we received were from victim services providers and other pro bono counsel. We expect this to change. The public defense bar has expressed great interest in pursuing this remedy more frequently, and our office is working with them, among other agencies, toward our common goal of developing uniform, streamlined procedures and ensuring that victims of human trafficking receive appropriate and life-changing relief. Towards that end, we support the current proposal, and the use of non-binding standards appears appropriate at this time based on the lack of case law interpreting Penal Code section 236.14. These standards strike the correct balance and would guide courts to apply the law more consistently, but still allow for flexibility and innovation. **COMMENTS** **STANDARD 4.15. VACATUR RELIEF UNDER PENAL CODE SECTION 236.14** Subsection (a) - Request to consolidate arrests and convictions that occurred in the same county:	No response required. No response required.

			In our experience, consolidation for hearing pursuant to Penal Code section 236.14(e) has been the most complicated provision to implement. We appreciate the thoughtful approach the committee has taken to simplify hearings within counties while still respecting the autonomy and jurisdictional concerns of courts and prosecuting agencies. We therefore support a policy favoring consolidated hearings within a single county. This may impose some burden on agencies such as our office, which has limited jurisdiction within the greater Los Angeles County, but this impact is also mitigated by the proposal for courts to grant relief without a hearing in uncontested matters. (See below for further discussion of Standard 4.15, subd. (c).)	No response required.
			In addition to supporting consolidated hearings within the same county, we would also support the consolidation of cases between counties. However, we acknowledge the committee's detailed concerns about the numerous and complex challenges and issues in attempting to provide uniform guidance to the courts. Moreover, as a practical matter, we found that courts in other counties are unlikely to transfer files in time for a hearing, if at all. The transfer of files is even less likely if only one petition is filed in a court outside the county of the originating court.	No response required.
			Subsection (b) - Confidentiality: Our service provider partners have stressed to us how dangerous it can be for their clients to report their trafficking situations. It is consistent with the purpose of the statute and with the common goals	No response required.

			of both the prosecution and defense to ensure all documents pertaining to a vacatur petition be designated as confidential from the time of filing. We also see the value of allowing "Doe" designations to protect victims of human trafficking in court proceedings.	
			We would recommend going one step further in the event a petition is granted. We have seen cases where even after the courts have granted a petition, the petitioner's conviction and even the petition hearing were still reported and publicly accessible on the court's online docket. While not explicitly addressed by Penal Code section 236.14, public access to these court records is devastating to victims of human trafficking who believe their criminal history is behind them and it is contrary to the spirit of the law. A policy to thus remove identifying information from the public records of cases where convictions have been vacated would help ensure that this does not happen.	The committee intends for proposed standard 4.15(d)(5), sealing of the court file if warranted under the factors in rule 2.550(d), to address this concern.
			Subsection (c) - Initial court review and orders: The proposed procedure is efficient and consistent with our office's previous comments on SPR18-15. It will moderate the demand for consolidation in the vast majority of cases. By eliminating the requirement of a hearing in uncontested matters, petitions may be granted on paper by courts with jurisdiction over each offense without resort to the transfer of files. Defects in petitions can also be identified and corrected without a hearing. This furthers judicial economy and preserves the resources of the parties. This will benefit victims of human	No response required.

			trafficking who will no longer be required to attend court or pay for the appearance of counsel to do so. We therefore fully support this procedure, and appreciate that it is accompanied by a standard of timeliness. Subsection (d)-Additional relief: We do not object to the consideration of each of these forms of relief as appropriate. ADDITIONAL SUGGESTIONS While we would prefer a well-pleaded petition over a Judicial Council Form, it would nonetheless be useful to develop a cover sheet that would set forth all related cases and enable the court to quickly determine whether the petitioner seeks consolidation. Likewise, a standardized form response would enable prosecutors to not only oppose the petition, but also to express non-opposition, stipulate to a hearing before a commissioner, and waive appearance where warranted.	No response required. The committee declines to recommend a form at this time. The committee circulated proposed forms for public comment in spring 2018 and concluded that statewide forms were limited in their ability to provide guidance on implementation of Penal Code section 236.14.

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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

6.	Orange County Bar Association by Deirdre Kelly, President	A	*Does the proposal appropriately address the stated purpose?* Proposed Standard 4.15 does 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.* Penal Code § 236.14 sets forth certain mandatory requirements and procedures for requesting and granting relief. However, certain aspects of the statute remain legally unresolved under present law such as the potential incriminatory nature of testimony by a petitioner under subdivisions (f)(1) and (g)(3) or the consolidation "into one hearing a petition with multiple convictions from different jurisdictions" under subdivision (e). Perhaps further legislative clarification and/or statutory authority is required. In the absence of legal resolution to the aforementioned issues and others, a nonbinding standard appears prudent and at the very least, offers guidance in the four areas covered. Such guidance foreseeably would be helpful in the larger metropolitan areas where multiple prosecutorial agencies and multiple judicial districts are present in the same county.	No response required. No response required.

SPR19-15

Vacatur Relief for Human Trafficking Victims (Approve Cal. Standards of Judicial Administration, standard 4.15)

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

7.	Superior Court of Los Angeles County	A	*Does the proposal appropriately address the stated purpose?* Yes, the proposal addresses 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.* We agree that it should be non-binding. *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.* We do not anticipate cost savings. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* Implementation requirements related to this proposal would not be significant since we have procedures developed for similar processes. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes, three months would be sufficient.	No response required. No response required. No response required. No response required.

			How well would this proposal work in courts of different sizes? This proposal should not cause any significant issues for any size court.	No response required.
8.	Superior Court of Orange County	N/I	**Request for Specific Comments** • *Does the proposal appropriately address the stated purpose?* Yes • *Please comment on the committee's decision to propose a nonbinding standard of judicial administration rather than a mandatory rule of court.* The nonbinding nature of the proposal is helpful in suggesting a workable solution for implementation of this legislation. • *Would the proposal provide cost savings? If so, please quantify*. Although I cannot quantify the savings, it appears to be significant based on the recommendation of consolidating into one filing the request for relief for multiple arrests and convictions. Additionally, savings could be achieved by consolidating hearings, or holding no hearings based on response from the prosecution. Since the proposal is directory in nature, and not mandatory, there is also no need to implement modifications, revision of processes, etc. which can be time consuming and/or costly. The advisory committee also seeks comments from courts on the following cost and implementation matters: • *Would the proposal provide cost savings? If so, please quantity*. See answer above. Although there	No response required. No response required. No response required. No response required.

			may be significant cost savings in terms of petitions filed and hearings heard, the recommendation under 4.15(d)(3) to recall or return paid court fines and fees would negate some of the anticipated cost savings. If court fines and fees are vacated so as to void the collection of future uncollected monies, any savings or loss would be unchanged. However, if paid fines and fees are returned any costs savings would be reduced due to time expended on behalf of staff to initiate and finalize the return of those funds as well as the loss of the funds themselves. • *What would the implementation requirements be for courts?* This is difficult to assess since the guidance is advisory only in nature and not mandatory. It is unclear if the standard would be adopted by our court. • *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes • *How well would this proposal work in courts of different sizes?* It seems it would work well. The advisory nature of the proposal enables courts of different sizes to adopt those areas that would be most helpful to their circumstances.	No response required. No response required. No response required.

9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Because the new rules are intended to be "non-binding guidelines," it would seem to make sense that some of the language in the proposed rule be changed from "should" to "may." In addition, there are portions of the rule where the court is given guidance on factors to consider. It is recommended that those portions of the rule specify that the lists provided are nonexclusive. The following changes are recommended: Rule 4.15, subdivision (a)(1): "The court ~~should~~ may 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." Rule 4.15, subdivision (d): "When granting the petition for vacatur relief under Penal Code section 236.14(a), the court ~~should~~ may consider order the following additional relief, including, but not limited to…" 4.15, subdivision (a)(4), "The court should consider the following, non-exclusive list of factors when deciding whether to consolidate hearings:…"	The committee prefers the use of "should." Per California Rules of Court, rule 1.5(b)(5), "should" expresses a preference for a nonbinding recommendation. See response above. See response above. The committee agrees with the suggestion to add "but not limited to," and has incorporated it into the amendments that it is recommending for adoption. The committee agrees with the suggestion and has incorporated it into the amendments that it is recommending for adoption.

Item number: 14

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Immigration Consequences on Plea Forms

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

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: 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.)

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Criminal Procedure: Immigration Consequences Advisement on Plea Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-101 and CR-102

Recommended by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 30, 2019

Contact
Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amending the language in the immigration consequences section of two Judicial Council plea forms to conform to the plain language of Penal Code section 1016.5.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, revise the immigration consequences advisement of *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) and *Domestic Violence Plea Form With Waiver of Rights—Misdemeanor* (form CR-102) to address concerns that the provision in each form contains inaccuracies, and to conform the provision to the plain language of Penal Code section 1016.5.

The revised forms are attached at pages 4–13.

Relevant Previous Council Action

The Judicial Council approved form CR-101, effective January 1, 2007, to provide increased uniformity in felony plea waiver forms used throughout the state. The immigration consequences

language from the original form has never been changed. Form CR-102 includes similar language about immigration consequences. This language has not changed since the form's approval, effective July 1, 2011.

Analysis/Rationale

California law requires that, before acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions, the court must administer the following advisement on the record to the defendant:

> 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,[1] 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 to provide increased uniformity in felony plea waiver forms used throughout the state. The form currently contains the following immigration advisement:

> 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.

(Judicial Council form CR-101, item (3)(i), at p. 4, original emphasis.)

The committee recognized that, contrary to Penal Code section 1016.5, forms CR-101 and CR-102 inaccurately suggest that certain consequences "will" rather than "may" follow from certain guilty pleas. Thus, the committee recommends replacing the immigration advisement in forms CR-101 and 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.

[1] 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 report and the proposed forms use the older terms of "deportation" and "exclusion."

Policy implications

The committee was concerned that by providing potentially inaccurate information in the immigration consequences advisement, these forms may discourage defendants from pleading to immigration-neutral offenses and create potential conflicts with accurate advice given by defense counsel. Thus, the committee recommends revising the advisement in forms CR-101 and CR-102 with language consistent with Penal Code section 1016.5.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Seven comments were received. Six commenters agreed with the proposal, including the Superior Courts of Los Angeles and San Diego Counties, the Orange County Bar Association (OCBA), and the Immigrant Legal Resource Center, which had originally brought this issue to the committee's attention. The Superior Court of Orange County did not indicate a position. The OCBA responded to the request for specific comments, including whether the attorney's declaration in forms CR-101 and CR-102 should be updated to include language about immigration consequences. The OCBA responded in the negative, noting that "[b]ecause defense attorneys have an affirmative duty to advise their clients of the collateral immigration consequences of the criminal case… a further affirmation that the attorney has advised the client of immigration consequences seems redundant."

Alternatives considered

The committee considered not undertaking revisions to forms CR-101 and CR-102 but recognized the importance in having the immigration consequences provision accurately reflect the language in Penal Code section 1016.5.

Fiscal and Operational Impacts

Expected costs are limited to possible case management system updates and the production of revised forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-101 and CR-102, at pages 4–13
2. Chart of comments, at pages 14–17

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.

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**

SPR19-16

Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)

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

	Commenter	Position	Comment	Committee Response
1.	Immigrant Legal Resource Center by Rose Cahn, Criminal and Immigrant Justice Attorney San Francisco, California	A	These proposed changes resolve the inaccurate information in the prior version of the model plea form. This is a welcome and needed change.	No response needed.
2.	Legal Services for Prisoners with Children by Aila Ferguson, Staff Attorney Oakland, California	A	It is a matter of human rights that people signing plea deals have all relevant information given to them at the time of signing. Including this check box is one necessary step toward that goal.	No response needed.
3.	Lily Harvey Oakland, California	A	No specific comment.	No response needed.

SPR19-16
Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)

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

	Commenter	Position	Comment	Committee Response
4.	Orange County Bar Association by Deirdre Kelly, President	A	*Does the proposal appropriately address the stated purpose?* Yes. Amending the immigration advisement to conform with Penal Code section 1016.5, assures that defendants will not be given incorrect statements of law by the court and eliminates the risk present under the old advisement of telling defendants they will be subject to deportation when their attorneys have in fact determined that will not be a potential consequence. *Does the language conform to the statue and remove inaccuracies? If not what language would do so?* The language tracks Penal Code section 1016.5 and is therefore an accurate statement of law. *Does the language sufficiently parallel the rest of the plea form stylistically?* Yes. *Should the attorney's declaration on both forms be updated to include language about immigration consequences specifically? If so, what language should be included?* No. The "Attorney's Statement" on the plea forms already requires the attorney to affirm that he or she has reviewed the consequences of the plea with the client. Because defense attorneys have an affirmative duty to advise their clients of the collateral immigration consequences of the criminal case (Padilla v. Kentucky (2010) 559 U.S. 356, 375) a further	• No response needed. • No response needed. • No response needed. • The committee appreciates the comment.

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

	Commenter	Position	Comment	Committee Response
			affirmation that the attorney has advised of the client of immigration consequences seems redundant.	
5.	Superior Court of Los Angeles County (no name provided)	A	*Does the proposal appropriately address the stated purpose?* Yes, the proposal addresses the stated purpose. *Does the language conform to the statute and remove inaccuracies? If not, what language would do so?* Yes, the language conforms to the statute and removes inaccuracies. *Does the language sufficiently parallel the rest of the plea form stylistically?* Yes, the language is sufficient. *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.* We do not anticipate cost savings. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures*	• No response needed. • No response needed. • No response needed. • No response needed.

SPR19-16
Immigration Consequences Explanation on Plea Forms (CR-101, CR-102)

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

	Commenter	Position	Comment	Committee Response
			(please describe), or modifying case management systems? Implementation requirements include changing the case management system to reflect the new language. Also, new forms (CR-101 and CR-102) will need to be ordered and distributed. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Six months would be preferred to give our technology staff sufficient time to make the necessary changes.	• No response needed. • No response needed.
6.	Superior Court of Orange County (no name provided)	NI	No response required. This is not a mandatory form and we have our own local tahl forms. However, if a change is finalized the information may be considered for inclusion in our local forms.	• No response needed.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comment.	• No response needed.

Item number: 15

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Interpreter's Statement on Judicial Council Forms

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

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: October 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.)

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Criminal Procedure: Interpreter's Statement on Judicial Council Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-101, CR-102, CR-115, and CR-170

Recommended by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 30, 2019

Contact
Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends removing a portion of the Interpreter's Statement on three Judicial Council 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. Form CR-170 includes the option for waiver of a significant right of the defendant, and therefore, for cases that require an interpreter, it is appropriate to include the Interpreter's Statement certifying the information was correctly translated.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Revise *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101), *Domestic Violence Plea Form With Waiver of Rights—Misdemeanor* (form CR-102), and *Defendant's Statement of Assets* (CR-115) by removing a portion of the Interpreter's

Statement to ensure that the statement accurately describes the role and responsibilities of interpreters; and

2. Revise *Notification of Decision Whether to Challenge Recommendation* (CR-170)—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—to add the proposed Interpreter's Statement.

The revised forms are attached at pages 4–16.

Relevant Previous Council Action

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-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.

Analysis/Rationale

Form CR-101 includes an Interpreter's Statement section on the final page, which is 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.

Forms CR-102 and CR-115 have nearly identical statements.

In response to concerns raised by a certified court interpreter, the committee circulated for public comment a recommendation to remove the second sentence of the Interpreter's Statement from the forms on which it currently appears, out of concern that the second sentence may:

- Exceed the role of the interpreter, which is limited to translating or interpreting statements, proceedings, or forms from and into English and a second language;
- Violate the interpreter's code of ethics and breach confidentiality because the translation of a waiver form is an extension of an attorney-client conference;
- Require information that the interpreter may not have (whether a person other than the defendant initialed or signed the form on the defendant's behalf); and
- May be unnecessarily duplicative of the Defendant's Statement and the Court's Findings and Order included on forms CR-101 and CR-102.

The committee also recommended adding the revised version of the Interpreter's Statement to form CR-170, an optional form used to confirm whether a mentally disordered defendant has

elected to challenge at a jury trial the report recommending confinement or continued outpatient treatment, or to waive that right. Since form CR-170 includes the option for waiver of a significant right of the defendant, the committee recognized that, for cases that require an interpreter, it is appropriate to include the Interpreter's Statement certifying the information was correctly translated.

Policy implications

The committee expressed its concern that retaining the Interpreter's Statement in its current form could place court interpreters in an untenable position or, alternatively, that some interpreters might refuse to sign the statement to avoid these conflicts.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Four comments were received. The Superior Courts of Orange and San Diego Counties agreed with the proposal, as did the Orange County Bar Association. The Superior Court of Los Angeles County agreed with the proposal, if modified. It recommended that all the forms be modified to include a line for the interpreter's certification number. The committee, the chairs of the Court Interpreters Advisory Committee (CAIP), and staff to CAIP with whom the committee consulted agreed that including the interpreter's nonconfidential certification number on the forms is a minor substantive change that benefits the court and the public.

The court also noted that judicial officers should be notified that the waiver form no longer contains verification of understanding and defendant's initials, and that verification would have to be placed on the record through inquiry in open court. The committee chose to notify Center for Judicial Education and Research staff of the changes to the forms so that this information can be incorporated in appropriate judicial education venues.

Alternatives considered

The committee considered not undertaking revisions to the Interpreter's Statement on forms CR-101, CR-102, and CR-115, and not adding the statement to form CR-170, but recognized the importance of having the Interpreter's Statement accurately describe the role and responsibilities of interpreters.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of revised forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-101, CR-102, CR-115, and CR-170, at pages 4–16
2. Chart of comments, at pages 17–21

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.
(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. 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.

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:

INITIALS

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:

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.

(SIGNATURE OF DEFENDANT) 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

(TYPE OR PRINT INTERPRETER'S NAME) (CERTIFICATION NUMBER)

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.

(SIGNATURE OF JUDICIAL OFFICER) DATE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(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.

_____ _____
(DEDENDANT'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

_____ _____
(TYPE OR PRINT INTERPRETER'S NAME) (CERTIFICATION NUMBER)

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 JUDICIAL OFFICER) 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 _____

(TYPE OR PRINT INTERPRETER'S NAME) _____ (CERTIFICATION NUMBER) _____

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.: EMAIL ADDRESS: ATTORNEY FOR (*Name*):	**DRAFT** **Not approved by** **the Judicial Council**
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

(TYPE OR PRINT INTERPRETER'S NAME) (CERTIFICATION NUMBER)

Form Approved for Optional Use
Judicial Council of California
CR-170 [Rev. January 1, 2020]

Penal Code, § 2972.1
www.courts.ca.gov

SPR19-17

Interpreter's Statements on Judicial Council Criminal Forms (Revise forms CR-101, CR-102, CR-115, CR-170)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Deirdre Kelly, President	A	1) Does the proposal appropriately address the stated purpose of protecting interpreters from exceeding their role and/or violating their code of ethics by 1) revealing information that may constitute a breach of constitionality and 2) making an assessment of understanding that the interpreter is not prepared to make? The new proposed wording for each of the forms achieves the intended purpose by 1) eliminating the interpreter's reporting of the defendant's initialing on the forms and verification of the defendant's understanding, and 2) limiting the interpreter statement to an affirmation that the form was truly translated. 2) Does the introduction of the interpreter's statement including the boxes achieve this purpose? The introduction of the interpreter's statement including the boxes in Forms CR-115 and CR-170 achieves this purpose of clearly identifying the interpreter's role, and it also provides a convenient place to identify the language translated from. 3) Are the revisions effective? The proposed changes seem to be an effective remedy for the concerns. The only suggestion is a possible reformatting of the boxes on the last two forms.	• No response needed. • No response needed. • The committee appreciates the comment and has reformatted the boxes on the last two forms, together with other formatting revisions.

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

SPR19-17
Interpreter's Statements on Judicial Council Criminal Forms (Revise forms CR-101, CR-102, CR-115, CR-170)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
2.	Superior Court of Los Angeles County (no name provided)	AM	Proposed Modifications We recommend all three forms be modified to include a line for the interpreter's certification number. *Request for Specific Comments* *Does the proposal appropriately address the stated purpose?* Yes, the proposal addresses the stated purpose. *Are the proposed revisions an effective way to address the concerns raised regarding the Interpreter's Statement?* Yes, the proposed revisions alleviate the issues and provide consistency for all three forms. However, we recommend all three forms be modified to include a line for the interpreter's certification number. *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.* We do not anticipate cost savings. *What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in*	• The committee appreciates the comment and is adding a line for the interpreter's certification number to all four forms. • No response needed. • The committee appreciates the comment and is adding a line for the interpreter's certification number to all four forms. • No response needed.

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

	Commenter	Position	Comment	Committee Response
			case management systems, or modifying case management systems. Judicial officers should be notified that the waiver form no longer contains verification of understanding and defendant's initials. That verification would have to be placed on the record through inquiry in open court. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Three months would be sufficient. *How well would this proposal work in courts of different sizes?* The proposal should work well for all court sizes.	• The committee appreciates the comment and will notify CJER staff of the changes to the forms so this information can be incorporated in appropriate judicial education programs. • No response needed. • No response needed.
3.	Superior Court of Orange County (no name provided)	A	**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?* Yes, the second statement "The defendant stated that he or she understood the contents of the form and then initialed and signed the form" should be remove on all forms that require interpreter translation and signatures. *• Are the proposed revisions an effective way to address the concerns raised regarding the Interpreter's Statement?* This statement, "The defendant stated that he or she understood the contents of the form and	• No response needed. • No response needed.

	Commenter	Position	Comment	Committee Response
			then initialed and signed the form does go beyond the duties of the interpreter. It can violate the code of ethics and a breach of confidentiality by stating what the defendant stated. The waiver form is between the attorney and his client. The interpreter cannot speak for the defendant nor make any assumptions that defendant understood the contents of the form; and assume that defendant initialed and signed the form. The sole purpose of the interpreter is to translate what is said on the form. The interpreter will translate what the defendant's saying as if the interpreter is the defendant. *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.* The cost would be production of new forms with the revisions. *• 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.* Only the notification of the changes to the interpreters. No training is required, no revision of any process or procedures, and no docket code in case management is needed.	• No response needed. • No response needed.

SPR19-17
Interpreter's Statements on Judicial Council Criminal Forms (Revise forms CR-101, CR-102, CR-115, CR-170)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			• *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Three months or less from Judicial Council approval is enough time. The only factor is the new forms with the revisions. • *How well would this proposal work in courts of different sizes?* I think it would be an easy transition to all courts. No revisions to processes or procedures, and no revisions to case management systems.	• No response needed. • No response needed.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response needed.

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

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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): 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: 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Criminal Procedure: Diversion for Incompetent Defendants and Posttrial Hearings on Competency

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.130

Recommended by
Criminal Law Advisory Committee

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 9, 2019

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amending rule 4.130 of the California Rules of Court relating to mental competency proceedings in criminal cases to incorporate changes due to Assembly Bill 1810 (Stats. 2018, ch. 34), a bill that significantly altered the statutory landscape for mental competency proceedings.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective January 1, 2020, to:

1. Require an expert competency report to contain an opinion as to whether the symptoms motivating the defendant's behavior would respond to mental health treatment;

2. Address diversion for defendants found to be incompetent; and

3. 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.

The text of the amended rule is attached at pages 6–10.

Relevant Previous Council Action

Rule 4.130 was adopted effective January 1, 2007. It was subsequently amended, effective January 1, 2018, to implement recommendations from the Judicial Council's Mental Health Issues Implementation Task Force to identify the information that must be included in a court-appointed expert's report on a criminal defendant's competency to stand trial.

Analysis/Rationale

Effective June 27, 2018, AB 1810 (see Link A) established mental health diversion (Pen. Code, §§ 1001.35, 1001.36; see Links B and C). It also amended the statutes for mental competency proceedings in both misdemeanor and felony cases to allow a judge to grant diversion to a defendant who has been found incompetent to stand trial. (Pen. Code, §§ 1370, 1370.01; see Links D and E.) Assembly Bill 1810 also provided a mechanism for a judge to reconsider the competency of a defendant awaiting transfer to a 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 updates California Rules of Court,[1] rule 4.130, which governs mental competency proceedings, to account for these significant changes in law.

Policy implications

This proposal may require that a court-appointed expert conduct an evaluation of the defendant that is more extensive than what is required by the current rule and provide greater detail in the expert report. Accordingly, implementation 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. However, the proposal also promotes efficiencies avoiding the unnecessary delay and costs caused by requiring a report by an expert that assesses competency and a separate report by another expert that assesses eligibility for diversion.

Comments

This proposal circulated for comment from April 11, 2019, to June 10, 2019. Eight comments were received. Four commenters agreed with the proposal, three commenters agreed with the proposal if modified, and one commenter disagreed with the proposed changes. The committee revised the standard in response to the comments. The comments raised four main issues, discussed below.

The People's right to request a determination of probable cause under Penal Code section 1368.1(a)

Three commenters expressed concern that the circulated language , which referred to the People's right to request a preliminary examination under Penal Code section 1368.1(a) (see Link F), was imprecise or overbroad. The committee agreed and modified the proposed amendment to rule 4.130(b)(3) to more specifically refer to the defendant's right to request a

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

preliminary examination under Penal Code section 1368.1(a)(1), and the People's right to request a determination of probable cause as provided in Penal Code section 1368.1(a)(2) and rule 4.131 (see Link G).

Waiver of competency trial

The proposed amendment to rule 4.130(c), as circulated, stated that 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 is found mentally competent at a trial conducted under Penal Code section 1369 (see Link H), 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 (see Link I). One commenter stated that the circulated language did not take into account that a criminal proceeding may be reinstated when a defendant stipulates or waives the right to a competency trial. The committee discussed whether the circulated language was sufficient to cover the situation raised by the commenter, as well as other related situations, and decided not to incorporate any changes without seeking further public comment.

Proposed added requirements to court procedures

One commenter stated that the proposal would mandate court procedures that should be permissive or discretionary. The proposal includes two new requirements. (All other recommended components would be optional.) First, the proposed rule would require an expert competency report to contain an opinion as to "whether the symptoms motivating the behavior would respond to treatment." This language, proposed to be added to rule 4.130(d)(1)(B), is intended to facilitate assessment for mental health diversion eligibility for defendants in competency proceedings. The committee believes this ultimately would promote efficiencies by avoiding the unnecessary delay caused by requiring a report by an expert that assesses competency and a separate report by another expert that assesses eligibility for diversion.

The committee also notes that the rule currently in effect requires 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." (Rule 4.130(d)(2)G).) The committee concluded that the likely benefit of the proposed requirement outweighed any potential burden, because it is sufficiently similar to what is already required.

Second, the proposed rule adds language in subparagraph (h)(2)(C) regarding posttrial hearings on competence, requiring the court's posttrial findings as to the defendant's mental competency to be stated on the record and recorded in the minutes. The committee recognized that, out of concerns for the defendant's privacy, the practice of many courts is to limit public access to competency reports and evaluations, which serve as the primary basis for a court's findings on mental competence. In requiring the court's findings to be on the record and recorded in the minutes, the committee sought to balance the public's First Amendment right of access to court records with a defendant's privacy interests in their personal medical information. Based on these considerations, the committee retained the requirements as proposed in the rule amendments.

Request for more guidance on proposed procedures and eligibility requirements
One commenter stated that the proposal—whether addressing procedures for mental incompetency diversion or for posttrial hearings on competency—does not provide adequate guidance to the courts. Specifically, the commenter sought additional guidance on the eligibility criteria for mental incompetency diversion. After discussion, the committee declined to revise the guidance on the proposed procedures and eligibility requirements. The committee notes that the eligibility criteria for mental health diversion is set forth in Penal Code section 1001.36(b)(1) and (2), and apply equally when a court is considering mental incompetency diversion pursuant to Penal Code section 1370(a)(1)(B)(iv). Additionally, at the outset, in developing this proposal, the committee intentionally chose to limit its scope, given the statutory language in Penal Code section 1001.35(b) favoring local discretion in development and implementation of diversion options and the lack of case law in this area.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the committee considered creating a separate rule for mental health diversion that could be cross-referenced with 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 solely update the existing rule on competency proceedings at this time. (See Pen. Code, § 1001.35(b).)

In developing the proposal, the committee discussed whether to require a court-appointed expert to opine on the defendant's eligibility for mental health diversion, but concluded that was too ambiguous and potentially also too burdensome.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal reflect the significant changes to mental competency proceedings set forth by AB 1810. As noted, this proposal may require that a court-appointed expert conduct a more extensive evaluation of the defendant than required by the current rule 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.

Some commenters noted that court-ordered and monitored diversion could increase court costs. The committee notes that this increase is associated with the legislative changes made by AB 1810, not as a result of this proposal.

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 6–10
2. Chart of comments, at pages 11–24
3. Link A: Assem. Bill 1810 (Stats. 2018, ch. 34), at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1810*

4. Link B: Pen. Code, § 1001.35, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1001.35.&lawCode=PEN*
5. Link C: Pen. Code, § 1001.36, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1001.36.&lawCode=PEN*
6. Link D: Pen. Code, § 1370, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1370.&lawCode=PEN*
7. Link E: Pen. Code, § 1370.01, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1370.01.&lawCode=PEN*
8. Link F: Pen. Code, § 1368.1, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1368.1.&lawCode=PEN*
9. Link G: Cal. Rules of Court, rule 4.131, at *https://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_131*
10. Link H: Pen. Code, § 1369, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1369.&lawCode=PEN*
11. Link I: Pen. Code, § 1372, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1372.&lawCode=PEN*

Rule 4.130 of the California Rules of Court is 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 may request a preliminary examination as provided in Penal Code section 1368.1(a)(1), or counsel for the People may request a determination of probable cause as provided in Penal Code section 1368.1(a)(2) 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 defendant found to be incompetent 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 or disorders rendering the defendant eligible for diversion, any progress reports concerning the defendant's treatment in diversion, or any other records related to a mental disorder or disorders 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 I, section 28(f)(2) 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 on 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 into 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 the defendant's 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 on the defendant's mental competency must be stated on the record and recorded in the minutes.

Advisory Committee Comment

* * *

SPR19-18

Diversion for Incompetent Defendants and Posttrial Hearings on Competency (California Rules of Court, Rule 4.130)

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

	Commenter	Position	Comment	Committee Response
1.	Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender Los Angeles County Alternate Public Defender by Erika Anzoategui, Acting Alternate Public Defender	NI	This proposed rule change is overbroad in stating a judge's obligation to permit a district attorney's right to demand a preliminary hearing pursuant to Penal Code section 1368.1, subdivision (a). The proposed language states: (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. Penal Code section 1368.1, subdivision (a)(1), authorizes a defendant, but not a prosecutor to request a preliminary hearing. By contrast, Penal Code section 1368.1, subdivision (a)(2), authorizes the defendant and the prosecutor to request a preliminary hearing. As such, this proposed new rule should be modified to reflect the plain meaning of Penal Code section 1368.1, subdivision (a), in its entirety as suggested below: (3) (a) In a felony case, if the judge initiates mental competency proceedings prior to the preliminary examination, counsel for the defendant may request a preliminary examination as provided in Penal Code section 1368.1(a)(1) and rule 4.131. (b) In a felony case involving death, great bodily harm, or a serious threat to	The committee agrees, in part, with the comment, and has modified the proposal to more clearly distinguish between a preliminary hearing requested by the defendant under section 1368.1(a)(1) and a determination of probable cause requested by the People under Penal Code section 1368.1(a)(2) and rule 4.131.

			the physical well-being of another person, 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)(2) and rule 4.131.	
2.	Orange County Bar Association by Deirdre Kelly, President	A	*Does the proposal appropriately address the stated purpose?* Yes. *Do the proposed procedures for the diversion of defendants who have been found incompetent to stand trial provide adequate guidance to the courts and litigants?* Yes. Since diversion is discretionary, the proposed amendments to rule 4.130(d)(2)(B), requiring an evaluator to offer an opinion on "whether symptoms of the mental disorder or disorders which motivated the defendant's behavior would respond to mental health treatment" are especially helpful in signaling to the court that defendant may benefit from diversion under Penal Code section 1001.36 in light of the procedures found in proposed rule 4.130(g)(1). *Do the proposed procedures for posttrial hearings on competency provide adequate guidance to the courts and litigants?* Yes, the rules mirror the language of the statute, Penal Code 1370(a)(1)(G).	No response required. No response required. No response required.
3.	Superior Court of Los Angeles County	A	*Does the proposal appropriately address the stated purpose?*	

			Yes, the proposal addresses 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?* Yes, the proposed procedures provide adequate guidance. *Do the proposed procedures for posttrial hearings on competency provide adequate guidance to courts and litigants?* Yes, the proposed procedures provide adequate guidance. *Would the proposal provide cost savings? If so, please quantify.* This proposal may increase costs to the court as defendants would be on diversion to the court (monitored by the court) and the court would require more extensive expert competency reports. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* The implementation requirements would include revisions to the current procedure and reference guide, including possible new Court Orders & Findings (COF) codes in the case management system, training for staff and	No response required. No response required. No response required. No response required. No response required.

			judicial officers, and negotiating a standard fee for the more extensive (expanded) expert competency reports. *Would the changes for the contents of expert reports in competency proceedings result in a significant cost to courts? If so, please quantify.* Yes, each report would probably require a higher fee for the opinion and more extensive evaluation. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Six months would be preferred to provide sufficient preparation time for implementation. *How well would this proposal work in courts of different sizes?* The proposal seeks to amend the California Rules of Court to correspond to a recent change in law. However, the potential shift of costs and increased costs may have a larger negative impact on smaller/less-populated counties (fewer courtrooms/doctors/programs).	The committee notes that the proposed change in the contents of the experts' reports is sufficiently similar to what is already required. The committee appreciates the response. Based on comments from other courts, the committee recommends three months from approval to implementation. No response required.
4.	Superior Court of Orange County	NI	*Does the proposal appropriately address the stated purpose?* Yes. *Do the proposed procedures for the diversion of defendants who have been found incompetent to stand trial provide adequate guidance to courts and litigants?* Yes.	No response required. No response required.

			Do the proposed procedures for post-trial hearings on competency provide adequate guidance to courts and litigants? Yes. *Would the proposal provide cost savings? If so, please quantify.* Possibly. Going through the diversion process may reduce the amount of hearings and reports required to re-evaluate if a defendant is still considered mentally incompetent. Without knowing the volume of cases that this would apply to, I cannot quantify the savings. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* There will be changes to our Mental Health procedures so that they cross-reference against our Mental Health Diversion procedures. *Would the changes for the contents of expert reports in competency proceedings result in a significant cost to courts? If so, please quantify.* Unknown at this time. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	No response required. No response required. No response required. No response required. No response required.

			How well would this proposal work in courts of different sizes? It seems as [if] it would work well.	No response required.
5.	Superior Court of Riverside County by Susan Ryan, Chief Deputy – Legal Services	N	The added language to rule 4.130(b)(3) is at best imprecise, and at worst contrary to statute. Penal Code § 1368.1(a)(1) gives the defendant, and only the defendant, the right to request a preliminary hearing while criminal hearings are suspended (see Penal Code § 1368(c)), which makes sense because the purpose is to ensure that a defendant is not committed for competency treatment in the absence of probable cause to bring him to trial, and a preliminary hearing held while a defendant is incompetent cannot be used as the basis for an information anyway (see generally People v. Duncan (2000) 78 Cal.App.4th 765, 769-72). In other words, Penal Code § 1368.1 lets a defendant request a preliminary hearing to test whether the charges are baseless and a competency commitment is unnecessary; there is no similarly compelling reason why the prosecution would need to request a potentially useless preliminary hearing while criminal proceedings are suspended. But instead of saying that, the proposed amendment to rule 4.130(b)(3) is flatly contrary to statute because it permits the District Attorney to request a preliminary hearing while criminal proceedings are suspended, perhaps they were going for a reference to Penal Code § 1368.1(a)(2). This provision does not give the District Attorney the right to request a preliminary hearing to support the filing of an	The committee agrees, in part, with the comment, and has modified the proposal to more clearly distinguish between a preliminary hearing requested by the defendant under section 1368.1(a)(1) and a determination of probable cause requested by the People under Penal Code section 1368.1(a)(2) and rule 4.131.

			information, but instead the right to request a probable cause determination for the specific and limited purpose of establishing a necessary prerequisite to a conservatorship as set forth in Welfare & Institutions Code § 5008(h)(1)(B)(ii). The background here is that such a conservatorship used to require a pending indictment or information, which posed a problem when the competency proceedings in the criminal case took place prior to that point; but the statutes were amended by Stats. 2017, ch. 246 to fix this and provide the probable cause hearing located in Penal Code § 1368.1(a)(2).	
			One suggestion would be to change the language of proposed rule 4.130(b)(3) so as to differentiate between the defendant's request of a prelim under Penal Code § 1368.1(a)(1), and the People's request for a probable cause determination under Penal Code § 1368.1(a)(2) and rule 4.131.	The committee agrees with these suggestions and has incorporated them into the amendments that it is recommending for adoption.
			In addition, this proposal may require our case management vendor to modify our case management system to develop codes that will allow us to report these cases properly. We may need new JBSIS codes as well. Unfortunately, we will not know what system modifications are required until we can consult with the vendor.	No response required.
			A factor to consider in light of the fact that we are in the midst of transitioning to a new case management system, is whether asking the vendor to modify the current system is practical	No response required.

			at this time. If the vendor is able to modify the system, it may take up to six months or more to develop the modification and turn it over to the court for testing prior to implementation. We may not meet the 2020 proposed implementation date.	
6.	Superior Court of San Bernardino County	A	*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?* The implementation requirements to the court would be to train clerk's office staff, judicial officers, and judicial assistants; modify existing procedures which includes forms for use; possibly creating new codes in the case management system. *Would the changes for the contents of expert reports in competency proceedings result in a significant cost to courts?* Need clarification on whether the court appointed expert is the same court appointed psychiatrist that makes the determination that the defendant is incompetent or is this an additional expert? If it is an additional expert: Yes, this change would result in additional costs for expert reports. In addition, the time involved to secure an expert as well as the added cost to	No response required. No response required. The committee intends for the same expert, when possible, to examine a defendant's competency to stand trial and eligibility for diversion under Penal Code sections 1370(a)(1)(B)(v) or 1370.01(a)(2).

			the court for the expert to complete the competency report. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. *How well would this proposal work in courts of different sizes?* Minor changes may need to be made to current procedures based on judicial orders	No response required. No response required.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Rule 4.130, subdivision (c) does not take into account situations where a defendant stipulates/waives his right to trial. It is recommended that portion of the rule be amended as follows: "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 or the defendant has waived his or her right to a trial 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."	Because this would be a substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider these suggestions during a future rules cycle.
8.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	N	The JRS notes that new processes and procedures must be put into place to handle unfiled EPOs as though they were filed documents.	No response required.

			The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Results in additional training, which requires the commitment of staff time and court resources. • Increases staff workload • Impact on local or statewide justice partners	No response required.
			The proposal seeks to mandate court operations/procedures that, instead, should be permissive/discretionary. The proposed rule should instead be in the form of guidelines or suggested practices.	The committee appreciates this input but determined that retaining the two requirements in the proposed rule (the other components of the proposal are discretionary) would be beneficial. First, the proposed rule adds language in subparagraph (d)(1)(B) requiring an expert 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. The committee believes this ultimately promotes efficiencies by avoiding the unnecessary delay caused by requiring a report by an expert that assesses competency and a separate report by another expert that assesses eligibility for diversion. The committee also notes that the rule currently in effect requires 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." (Rule 4.130(d)(2)G).) The committee concluded that the likely benefit of the

				proposed requirement outweighed any potential burden, because it is sufficiently similar to what is already required. Second, the proposed rule adds language in subparagraph (h)(2)(C) requiring the court's posttrial findings as to the defendant's mental competency to be stated on the record and recorded in the minutes. The committee recognized that out of concerns for the defendant's privacy, the practice of many courts is to limit public access to competency reports and evaluations, which serve as the primary basis for a court's findings on mental competence. In requiring the court's findings to be on the record and recorded in the minutes, the committee sought to balance the public's First Amendment right of access to court records with a defendant's privacy interests in their personal medical information.
			This proposal may require case management vendors to modify case management systems to develop codes that will allow us to report these cases properly. We may need new JBSIS codes as well. Unfortunately, we will not know what system modifications are required until we can consult with the vendor.	No response required.
			A factor to consider in light of the fact that we are in the midst of transitioning to a new case management system, is whether asking the vendor to modify the current system is practical at this time. If the vendor is able to modify the system, it may take up to six months or more to develop the modification and turn it over to the	No response required.

			court for testing prior to implementation. We may not meet the 2020 proposed implementation date.	
			Unfortunately, neither the proposed procedures for mental incompetency diversion nor the proposed procedures for posttrial hearings on competency provide adequate guidance to the courts, specifically the eligibility criteria for mental incompetency diversion.	The committee notes that the eligibility criteria for mental health diversion is set forth in Penal Code section 1001.36(b)(1) and (2), and apply equally when a court is considering mental incompetency diversion pursuant to Penal Code section 1370(a)(1)(B)(iv). Additionally, at the outset, in developing this proposal, the committee intentionally chose to limit its scope, given the statutory language in Penal Code section 1001.35(b) favoring local discretion in development and implementation of diversion options and the lack of case law in this area.
			This proposal will add additional hearings to incompetent to stand trial proceedings in that it will allow the district attorney to request a preliminary examination after the court has suspended criminal proceedings. Currently, the statute only allows defense counsel to request a preliminary hearing after a finding of incompetence.	The committee agrees, in part, with the comment, and has modified the proposal to more clearly distinguish between a preliminary hearing requested by the defendant under section 1368.1(a)(1) and a determination of probable cause requested by the People under Penal Code section 1368.1(a)(2) and rule 4.131.
			The court would also be required to set a hearing to consider diversion after the court found a defendant incompetent. New minute codes are required to record any findings of eligibility for diversion. Currently, the Riverside University Health System – Behavioral Health Department is responsible for providing treatment plans and progress reports for defendants who are placed on mental health	No response required.

			diversion. Should we utilize the same resources to monitor defendants while they are on mental incompetency diversion, we may overburden them in terms of being able to meet the demands of the court in addition to the cost of staffing and other resources.	
			Additionally, if the court places a defendant on mentally incompetent diversion, the court must set a hearing when a defendant is terminated from diversion, which results in an additional hearing. The court is also required to appoint a medical examiner to reexamine the defendant's competence. Thus, the county would incur additional costs for the medical evaluation.	No response required.
			The proposal also requires the court reconsider findings of incompetency on defendant who the court previously found incompetent and are currently awaiting placement, which will result in more hearings added to the court's calendar.	No response required.
			Currently, during 1372 Certification of Mental Competency Hearings, the court is not required to state any findings on the record. However, under this proposal, the court must state its findings as to the defendant's mental competency on the record and the courtroom assistants must record the findings in the minutes. This will result in the need to create more minute codes to record accurately the court's findings. Additionally, this proposal allows the court to consider any evidence, presented by any party, which is relevant to the defendant's current mental competency. The	No response required.

			courtroom assistants may then be required to mark and admit this evidence and create an exhibit list. If these documents are not ordered returned the counsel, they will be sent to the Exhibit Custodian. According to the Department of State Hospitals, they have noticed an increase in the number of defendants requiring placement. We cannot estimate how many defendants would be eligible for incompetency diversion; therefore, we may need to consider opening a second mental health court at the Hall of Justice, and if that occurs, the court would need additional court staff.	No response required.

Item number: 17

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Criminal Procedure: Proof of Service in Criminal Record Clearing Requests

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-106 and CR-106-INFO

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends approval of a new optional form and an accompanying information sheet 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. The new forms will help self-represented petitioners meet requirements for service on the prosecuting agency and other relevant parties.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, approve:

1. *Proof of Service—Criminal Record Clearing* (form CR-106), which can be used by petitioners to provide proof of service of a criminal record clearing request; and

2. *Information on How to File a Proof of Service in Criminal Record Clearing Requests* (form CR-106-INFO), which provides general information and directions on how to use and file form CR-106.

The new forms are attached at pages 5–8.

Relevant Previous Council Action

The Judicial Council has taken no previous action on this proposal.

Analysis/Rationale

In recent years, the Legislature has passed multiple bills authorizing petitions for dismissal, sealing, or other related criminal record clearing relief in an increasing number of circumstances.[1] Many petitioners seeking relief are self-represented because these petitions are generally filed after the criminal case or inquiry has concluded. While developing forms to implement Penal Code section 851.91 (see Link A), the Criminal Law Advisory Committee discussed whether to develop an accompanying proof of service form. It determined instead to develop a single, optional proof of service form that could be used with several different record clearing requests. Such a form would help self-represented petitioners meet requirements for service on the prosecuting agency and other relevant parties, as set forth in the statutes that authorize the various forms of relief. (For example, 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.)

Policy implications

The committee intends for form CR-106 to reduce procedural barriers for self-represented petitioners seeking criminal record clearing.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eight comments were received. Four commenters agreed with the proposal, one agreed with the proposal if modified, and three did not indicate a position but suggested changes. The committee revised the forms in response to the comments.

Several comments recommended making the forms more user-friendly by improving readability, simplifying language, and adding more information about electronic service. The committee agreed with the recommendations and incorporated them into the proposed forms.

One commenter recommended that the committee develop additional resources—such as step-by-step checklists—to guide self-represented litigants with record clearing requests. The committee declined to develop additional resources at this time.

The committee requested specific comments on whether it was confusing to have one proof of service form for use with a variety of record clearing requests arising from different statutes with different procedural requirements. Although one commenter stated that one form could be confusing, four commenters stated that a single form would not be confusing. The committee

[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).

decided that a single proof of service form for use with many types of record clearing requests was more efficient.

Two commenters requested clarification on whether the proof of service form was intended for limited used—only in conjunction with the optional Judicial Council forms listed in CR-106-INFO[2]—or whether the proof of service form could be used with any record clearing request. The committee determined that it would be helpful to petitioners and the courts for the form to be used broadly, including with Proposition 64 forms and petitions for writs of habeas corpus. Accordingly, the list of optional Judicial Council forms on form CR-106-INFO was updated to include *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-400) and *Petition for Writ of Habeas Corpus* (form HC-001).

When developing the proposal, the committee discussed whether 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 who is not a party to the case. No equivalent sections address service by mail or personal delivery in the Penal Code. The committee determined that these sections of the Code of Civil Procedure are likely inapplicable 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.[3]

The committee requested specific comments on whether there were policy reasons for the server not to be a party to the action. One commenter stated that allowing a petitioner to serve copies of his or her own petition would reduce barriers for self-represented litigants. Another commenter stated that the policy reasons for nonparty service in a civil case did not seem to apply because, in the civil context, servers may need to be called as witnesses to establish proper service for ongoing court proceedings, whereas the main issue in criminal record clearing petitions is that service occurred, and the server would declare that service occurred under penalty of perjury. Two other commenters responded that there were no policy reasons for the server not to be a

[2] The following six petitions were listed in the circulated version of form CR-106-INFO: *Petition for Dismissal* (form CR-180), dismissals under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, and 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; and *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412). In response to the comments, the committee added *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-400) and *Petition for Writ of Habeas Corpus* (form HC-001) to form CR-106-INFO.

[3] See *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); *People v. Superior Court* (*Laff*) (2001) 25 Cal.4th 703, 729 ("only those procedural provisions of the Code of Civil Procedure that expressly are made applicable to penal actions apply in criminal cases").

party to the action. Based on these comments, the committee recommends that the proof of service form reflect that petitioners may serve their own petitions.

Alternatives considered

When developing the proposal, the committee discussed whether to develop a generic proof of service form for use in all criminal proceedings. It determined that narrowing the form for use with record clearing requests would serve a more useful purpose. It noted that in many instances these requests are filed 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 better meet statutory notification and service requirements.

Fiscal and Operational Impacts

The proposed forms are optional. Expected costs would be limited to the production of forms, training, and possible case management system updates.

Attachments and Links

1. Forms CR-106 and CR-106-INFO, at pages 5–8
2. Chart of comments, at pages 9–19
3. Link A: Pen. Code, § 851.91, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=851.91.&lawCode=PEN*

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. Keep a copy of this form for your records.

Fill in court name and street address:

Superior Court of California, County of

Fill in criminal case number and case name:

Case Number:

Case Name:
People of the State of California
v.

(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" is a form used in legal cases.
- If you want a judge to look at your case, you or someone who is helping you has to file certain documents in court.
- You also have to give or mail copies of those documents to the other party in the case, usually the prosecutor.
- The proof of service has spaces for you or someone who is helping you to write in when, where, and how the other party got the documents.
- Once the proof of service is filled out and filed with the court, it shows the court that the other party got the documents.

3 What is record clearing?

- Record clearing is a process that allows you to ask a court to improve your criminal record.
- For example, a court may be able to change some convictions from felonies to misdemeanors.
- You can start the process of record clearing by filing certain documents or forms called "applications," "petitions," or "motions."

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. You can do so by "serving" (delivering) 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 know about 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 to be widely used with **any** record clearing request that requires notification or service of the request to the prosecuting agency and other parties, such as the following 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, and 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 (Health and Safety Code, § 11361.8)* (form CR-400), relief under Proposition 64 for specified marijuana-related convictions
- *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)
- *Petition for Writ of Habeas Corpus* (form HC-001)

DRAFT
Not approved by the Judicial Council

Information on How to File a Proof of Service in Criminal Record Clearing Requests

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. That way, the court may add helpful information to the document or form, such as a hearing date.
- 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 completed and signed proof of service.
- 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 then you should file the proof of service with the court after the parties are served.

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 serving electronically:

- Do not use *Proof of Service—Criminal Record Clearing* (form CR-106).
- Carefully read and follow the requirements in California Rules of Court, rule 2.251, and 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; and
- 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.

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Bay Area Legal Aid by Stacey Guillory Regional Reentry Coordinator	NI	Bay Area Legal Aid writes in response to your request for public comment concerning Judicial Council proposed forms CR-106 and CR-106-INFO. In concept, the form could achieve the stated purpose. It has the potential to empower individuals filing pro per to complete the entire process on their own. The term "record clearance" is a helpful signifier of relevancy for individuals seeking relief to diminish the impact of an arrest or criminal conviction.	No response required.
			We recommend streamlining the informational page and emphasizing key text for ease of reading (e.g., by using bold type). The use of modifiers such as "sometimes" or "in most cases" may make it more challenging to determine the appropriate course of action. The form and information sheet should be written in a way that would be understandable to a typical self-represented client who may more readily understand colloquial terms (e.g. felony reduction to a misdemeanor) rather than Penal Code sections or form titles.	The committee agrees with the suggestion to make changes to the information form to improve readability and has incorporated them into the proposed form that it is recommending for approval.
			Having one proof of service for such a variety of record clearing requests can be confusing because of the differences in procedural requirements for each criminal record remedy. If the Judicial Council believes that it is important to keep the proof of service for all record clearing requests to a singular form, we advise revising the form so that it walks an individual through each record clearing	The committee declines to develop additional resources at this time, but may in the future.

	Commenter	Position	Comment	Committee Response
			process step by step. The information page should offer clear guidance on which process or procedure is required to remove any guesswork. We suggest five specific revisions to make form CR-106 easier for a self-represented individual to fill out. First, add checklists for: 1) the criminal record remedies a pro per litigant is filing; and 2) the documents they are filing. Second, highlight the service options under sections (4) and (5) as mutually exclusive. Third, in 4(c) include a line under the blank space to indicate information is needed for the date, city and state. Fourth, consider listing "District Attorney's Office served" and "Police Department served," if applicable, with a line under each blank space that needs to be filled out. Finally, we recommend using plain language in section 5(a) "name of person and agency:" with a line under each blank space that needs to be filled out.	The committee declines to develop additional resources at this time, but may consider these suggestions in the future. Regarding the suggestion to add lines under each blank space, the fillable version of the form has a fillable space for petitioners to indicate information in #4(c) for the date, city, and state, and in #5(a) for the name of person and agency.
2.	Community Legal Aid SoCal by Kellen Russoniello Staff Attorney Santa Ana, California	A	*In response to whether "Record Clearing" is an appropriate term:* Yes, this term is appropriate and adequate. Other commonly used terms are "expungement" and "cleaning up your record." Record clearing should be sufficient to notify people seeking to file on their own. *In response to whether a petitioner should be allowed to serve copies of his/her own petition:* This would reduce a barrier to filing in pro per,	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			and for this reason should be allowed. An issue may arise if a party that needed to be served raises a problem with service, in which case the petitioner would need to demonstrate that they complied with the service requirements. This will probably not be a big enough occurrence to outweigh the benefit of allowing the petitioner to serve the other parties.	
			• The Superior Court in Orange County requires that service be completed before filing the petition and that the completed/signed proof of service be filed at the same time as the petition.	The committee appreciates the comment. Form CR-106-INFO notes that this is the preferred process for some courts.
			• Consider adding "People v." in the Case Name box. This may help people filing on their own who may not know what the case name is.	The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.
		A	• Will this form be available for use with petitions not listed (e.g., Prop 47 and Prop 64 petitions) or where a separate proof of service form exists (e.g., Prop 64, CR-401)? If not, this should be stated. For petitions where a separate proof of service form exists, this form should state, either on the form itself or in the INFO sheet, that the person must/may check if there is another proof of service form specifically for that petition.	The committee intends for the form to be broadly used with all record clearing requests, including Prop. 47 and Prop. 64 petitions. The committee has incorporated changes reflecting this intention into the proposed forms that it is recommending for approval.
			• In Section 8 of the draft INFO sheet, the last clause of the last sentence should be amended to read, "along with a completed and signed proof of service."	The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval.

SPR19-19
Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

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

	Commenter	Position	Comment	Committee Response
3.	Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender Los Angeles County Alternate Public Defender by Erika Anzoategui, Acting Alternate Public Defender	N/I	The proposal addresses the stated purpose of providing self-represented litigants with a streamlined proof of service, and instructions on how to use it. The proof of service form itself, CR-106, is understandable; one bullet point should be added informing the person who is filing to keep a copy for his or her records (see below). The information sheet, CR-106-INFO is less clear; we propose several changes below. It is not confusing to have one proof of service form for different record-clearing requests, and, particularly in this context, there is no policy reason why the server should not be a party to the case. It would in fact be helpful if this form could be used in all criminal proceedings. In the Clara Shortridge Foltz Criminal Justice Center in downtown Los Angeles, most documents that are filed in the main clerk's office must be served first, and proof of service must be included when the document is filed. If a litigant choses to file in a courtroom, the document can be filed with the judicial assistant and then served on the opposing party. **Suggested Changes to Proposed Language:** **CR-106** Instructions Add final bullet point:	No response required. The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval. The committee declines to extend the form for use with all criminal proceedings at this time. The committee appreciates the comment. Form CR-106-INFO notes that this is the preferred process for some courts.

	Commenter	Position	Comment	Committee Response
			• You should keep a copy of the form for your records. **CR-106-INFO** 2. What is proof of service? A "proof of service" is a form used in legal cases. If you want a judge to review your case, you or someone who is helping you has to file certain documents in court. You also have to give or mail copies of those documents to the prosecutor on your case. The proof of service has spaces for you to write in when and where you gave the prosecutor the documents. Once you have filled it out and signed it, the proof of service shows the court that the prosecutor got the documents. 3. What is record-clearing? Record-clearing is a process that allows you to ask a court to improve your criminal record. For example, a court may be able to change some charges from felonies to misdemeanors. You can start the process of record-clearing by filing certain documents called "applications," "petitions," or "motions."	The committee agrees with this suggestion and has incorporated it into the proposed form that it is recommending for approval. The committee agrees with this suggestion, with minor alterations, and has incorporated it into the proposed form that it is recommending for approval. The committee agrees with this suggestion, with minor alterations, and has incorporated it into the proposed form that it is recommending for approval.
4.	Orange County Bar Association by Deirdre Kelly, President	A	*Does the proposal appropriately address the stated purpose of responding to greater numbers of record clearing requests and providing tools for self-represented parties?* Yes. The two forms provide a user-friendly option for self-represented defendants who wish to clear prior cases.	No response required.

SPR19-19
Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Is there another better term for "record clearing?" "Record clearing" seems like the appropriate terminology.	No response required.
			Are the two items written in an understandable way? Yes. Based on a review of the code sections for which the form and information sheet apply, they appear to clearly and accurately describe the purpose and procedures.	No response required.
			Is it confusing to have one form to address multiple statutes with different procedural requirements? Providing multiple forms to achieve this purpose would arguably be more confusing.	No response required.
			Should the use be even broader? Using the proposed form and information sheet solely for record clearing, and not more broadly, seems like a correct first step. Should the Judicial Council want to consolidate further, that could be considered later.	No response required.
			Is it ok that the service requirements don't mirror Civil Code Section 1011 and 1013a? There are no explicit requirements in the criminal code sections related to record clearing that service be by a non-party for these actions. Also, the policy reasons for non-party service in the context of a civil action (Civil Code section 1011 and 1013a) do not seem to apply here. In those contexts, the servers may need to be called as witnesses to establish proper service for	No response required.

	Commenter	Position	Comment	Committee Response
			ongoing court proceedings. The main issue here is that service occurs, and the party declares under penalty of perjury that this is true. *Comments on different practices on timing of filing with the court?* We defer to the courts' input on this issue, although it does seem like a universal practice might be preferable.	No response required.
5.	Superior Court of Los Angeles County	A	*Does the proposal appropriately address the stated purpose?* Yes, the proposal addresses 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?* This term is appropriate. *Are the form and information sheet written in a way that would be understandable to a typical self-represented court user?* Yes, the forms are understandable. *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?* No, this is not confusing.	No response required. No response required. No response required. No response required.

	Commenter	Position	Comment	Committee Response
			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? No, we do not believe there are policy issues. *Would the proposal provide cost savings? If so, please quantify.* We do not anticipate cost savings. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* Implementation requirements would be minimal. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes, three months would be sufficient.	No response required. No response required. No response required. No response required.
6.	Superior Court of Orange County	N/I	*Does the proposal appropriately address the stated purpose?* Yes, this proof of service form is to be only used in petitions/motions requesting for court to review a criminal record for dismissal, vacatur, resentencing, reduction, sealing, or other record clearing remedy which can include expungements.	No response required.

SPR19-19
Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			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? Yes, expungement, motion to vacate conviction or sentence	The committee believes that "record clearing" is a useful term to refer to these remedies as a whole.
			Are the form and information sheet written in a way that would be understandable to a typical self-represented court user? No, the form sounds a bit vague in the beginning. It says the person who serves (delivers). It should state specifically, "The person who serves the document to the other party or parties by mail or in person. As a typical self-represented individual for the first time reading the CR-106 form with the option of proof of service electronically, I wouldn't know what or how to file that. The CR-106-INFO should provide a brief overview of filing a proof of service electronically and provide the answers as to what, how, where, and when. We have to remember the people reading and using this form, the majority, maybe self-represented. The information and instruction should be specific.	The committee prefers the proposed language. The committee agrees with this suggestion, in part, and has incorporated a reference to California Rules of Court, rule 2.251, into the information form.
			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?	

	Commenter	Position	Comment	Committee Response
			No, I think the form is very clear that its purpose is for only criminal record clearing requests. I think the CR-106 Proof of service form should be attached with the petitions dealing with record clearing. It would save time looking for the form when it's already attached. *Is there a need for a proof of service form for broader use in criminal proceedings, not just limited to criminal record clearing requests?* There is none that comes to mind at this moment.	No response required. No response required.
7.	Superior Court of San Bernardino County	A	*Would the proposal provide cost savings?* No. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* The implementation requirements to the court would be to train clerk's office staff, judicial officers, and judicial assistants; creating procedures; possibly creating new codes in the case management system. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. *How well would this proposal work in courts of different sizes?*	No response required. No response required. No response required.

SPR19-19

Proof of Service in Record Clearing Requests (CR-106 and CR-106-INFO)

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

	Commenter	Position	Comment	Committee Response
			The procedure would work, with the biggest impact being volume based on the number of filings at each district.	No response required.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	CR-106, states in the bulleted instructions as follows: "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." There is a risk that pro per defendants will construe the aforementioned language broadly and use this form when filing habeas petitions or other motions for resentencing or reductions in their sentence, or to vacate a conviction or sentence for a whole variety of reasons. Although the information form, in section 6, does give a more limiting list of when the form can be used, in order to avoid the confusion and overuse of the form, it may be beneficial to reference the list in CR-106 itself.	The committee intends for the form to be broadly used with all record clearing requests. The committee has incorporated changes reflecting this intention into the proposed forms that it is recommending for approval.

Item number: 18

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Petition for Resentencing (Military)
Approve form CR-412/MIL-412

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:
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.)
The Criminal Law Advisory Committee is submitting alternate forms to the council. One form is based on the current version of Penal Code section 1170.91, and one is based on a version proposed by a pending bill (Assem. Bill 581 (2019–2020 Reg. Sess.)) that would affect one element of the form. The committee recommends that the appropriate form go into effect depending on whether AB 581 is enacted.

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Criminal Procedure: Petition for Resentencing (Military)

Rules, Forms, Standards, or Statutes Affected
Approve form CR-412/MIL-412

Recommended by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 31, 2019

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends approval of 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. Due to a pending bill (Assem. Bill 581 (2019–2020 Reg. Sess.)) that would affect one element of the form, the committee is submitting alternate forms to the council and recommending that the appropriate form go into effect depending on whether AB 581 is enacted.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Approve *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), only if AB 581 is *not*

enacted, to be used by individuals who were sentenced before January 1, 2015 to petition for resentencing under Penal Code section 1170.91.

2. Approve *Petition for Resentencing Based on Health Conditions From Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412), only if AB 581 is enacted, to be used by individuals to petition for resentencing under Penal Code section 1170.91, regardless of the date of the original sentence.

3. The form that does not become effective on January 1, 2020, is not approved for any use.

The new form is attached at page 5, with the alternate version incorporating statutory changes proposed by AB 581 on page 6.

Relevant Previous Council Action

At its October 2013 meeting, the Judicial Council approved an optional form, *Notification of Military Status* (form MIL-100), to facilitate a court's ability to address legal issues implicated by a party's military service status and to comply with alternative criminal sentencing considerations for current and former military service members under Penal Code section 1170.9. The form was subsequently amended to reflect legislation directing courts to inform criminal defendants at arraignment of laws designed for former or current military service members.

At its October 2015 meeting, the Judicial Council approved optional forms to facilitate implementation of Penal Code section 1170.9(h), legislation authorizing courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Analysis/Rationale

AB 2098 (Stats. 2014, ch. 163) enacted Penal Code section 1170.91 (see Link A), which requires courts to consider enumerated health conditions resulting from military service as a mitigating factor in felony sentencing. AB 2098 did not, however, apply to veterans convicted prior to January 1, 2015. AB 865 (see Link B) expanded the mitigating provisions of section 1170.91 to apply to veterans convicted of felonies prior to January 1, 2015, by allowing those veterans to petition for resentencing if they suffered from an enumerated health condition as a result of military service, and it was not considered as a factor in mitigation at the time of sentencing.

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; see Link C.) 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).

The Criminal Law Advisory Committee recommends an optional petition form since many of the AB 865 petitions for resentencing will be filed by *pro se* defendants, most of whom will be incarcerated and suffering from mental health problems. The committee consulted with the Veterans Subcommittee of the Collaborative Justice Courts Advisory Committee in developing the form. The subcommittee recommended developing a form and provided thoughtful feedback.

AB 581 and alternate forms

While the form circulated for public comment, the Legislature considered AB 581 (see Link D), which would amend section 1170.91 to allow a defendant to petition for resentencing without regard to whether the defendant was sentenced prior to January 1, 2015, and would clarify that relief is available whether or not there was argument or evidence about the defendant's condition at trial. If AB 581 becomes law, it will become effective January 1, 2020, and optional form CR-412/MIL-412 would have to be revised to take out item #6, a checkbox to indicate that the petitioner was sentenced before January 1, 2015. In order to assure that an appropriate version of the form becomes effective, the committee has drafted alternate versions of the form, at pages 5 and 6, to reflect a form based on current law and a form based on changes proposed by AB 581, and has submitted both to the Judicial Council. The committee recommends that the Judicial Council approve the forms so that only the relevant form goes into effect January 1, 2020. This will allow the council to approve the appropriate version of the form and make it available to eligible defendants without waiting for another rules cycle to elapse and will avoid having the council approve a form that is out of date three months before it is to take effect.

Policy implications

The Criminal Law Advisory Committee recommends an optional petition form since many of the AB 865 petitions for resentencing will be filed by *pro se* defendants, most of whom will be incarcerated and suffering from mental health problems. The form will facilitate the process for seeking relief for eligible defendants.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Eight comments were received. Two commenters agreed with the proposal, three agreed with the proposal if modified, and three did not indicate a position but appeared to agree with the proposal if modified. The committee revised the standard in response to the comments. The comments raised four main issues, discussed below.

Use by self-represented litigants and attorneys

The proposal requested specific comments on whether the form, which was drafted from a self-represented litigant's perspective, should be modified to include attorney information. Three commenters recommended modifying the form so that attorneys could use the form as well. One commenter recommended that the form should be limited to self-represented litigants, since attorneys could file original pleadings. The committee agreed that the form should be for use by both self-represented litigants and attorneys, noting that many courts prefer the uniformity of a standard form.

Sealing records
The circulated form included a check box for the petitioner to indicate attachment of relevant records or other documents supporting the claim; for example, military records, conviction documents, mental health treatment records, and medical records. The committee requested specific comments on whether the form should describe the process for filing these documents under seal, as they likely contained sensitive information. In response, three commenters stated that there should be more specific information about the process for filing sensitive documents under seal. Another commenter recommended removing the option from the form entirely, as the statute does not require a petitioner to submit evidence in support of the petition at the time of the initial filing. The commenter also noted that if counsel is appointed to represent the petitioner, that counsel may submit relevant evidence appropriately at the hearing. The committee agreed with the recommendation to remove the option to attach relevant records or other documents.

Appointment of Counsel
A commenter recommended that the petition include a request for appointment of counsel, since a defendant in a criminal action has the right to appointed counsel at a resentencing hearing if indigent. Because this would be a substantive change to the proposal, the committee believes public comment should be sought before the recommendation is considered for adoption. The committee intends to consider this recommendation during the next proposal cycle.

Information sheet
The proposal requested specific comments on whether the committee should develop an accompanying information sheet to aid self-represented litigants in filling out the petition and filing it with the court. Five commenters recommended development of an information sheet, largely to provide guidance on how to obtain and file records to support the petition, as well as providing information on eligibility and how to seek legal representation. As discussed, the committee decided to remove the part of the petition regarding the attachment of relevant records, reducing the need for an information sheet. Accordingly, the committee declined to develop an information sheet at this time.

Alternatives considered
In addition to the alternatives considered in response to the public comments, 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.

Attachments and Links

1. Form CR-412/MIL-412 (current law version), at page 6
2. Form CR-412/MIL-412 (AB 581 version), at page 7
3. Chart of comments, at pages 8–24
4. Link A: Pen. Code, § 1170.91, at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.91.&lawCode=PEN*
5. Link B: Assem. Bill 865, (Stats. 2018, ch. 523) at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB865*
6. Link C: Assembly Committee on Public Safety, Analysis of Assem. Bill No. 865 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, at *https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB865*
7. Link D: Assem. Bill 581, (2019-2020 Reg. Sess.) at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB581*

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.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council** **CURRENT LAW VERSION**
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 DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b) **Instructions** (*if you are filing for yourself*): File this petition with the same court where you were sentenced. File a separate petition for each case in which you are asking for resentencing. "Petitioner" as used in this form refers to you.	CASE NUMBER: *FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

Petitioner/counsel declares as follows:

1. ☐ Petitioner is currently serving a sentence for the felony conviction listed below.
   - ☐ Petitioner is currently in jail or prison.
   - ☐ Petitioner is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of the conviction.

2. ☐ On *(date of conviction):* , petitioner 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. ☐ Petitioner was a member of the U.S. military. Petitioner served in (branch of military):
from (*date of entry into military):* until *(last date served in the U.S. military):*

3B. ☐ Petitioner is currently a member of the U.S. military. Petitioner serves in *(branch of military)*:
and petitioner's entry date was:

4. ☐ As a result of military service, petitioner may be suffering from the following health conditions (*check all that apply*):
   - ☐ Sexual trauma
   - ☐ Post-traumatic stress disorder (PTSD)
   - ☐ Traumatic brain injury (TBI)
   - ☐ Substance abuse
   - ☐ Mental health problems *(list or describe)*:

5. ☐ When petitioner was sentenced, the judge did not consider health conditions resulting from petitioner's military service as a factor in deciding the sentence.

6. ☐ Petitioner was sentenced before January 1, 2015.

Date:

▶ _____
SIGNATURE OF PETITIONER/DEFENDANT OR ATTORNEY

Proof of Service **(form CR-106) may be used to provide proof of service of this petition.**

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.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council** **AB 865 VERSION**
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 DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)	CASE NUMBER:
Instructions (*if you are filing for yourself*): File this petition with the same court where you were sentenced. File a separate petition for each case in which you are asking for resentencing. "Petitioner" as used in this form refers to you.	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

Petitioner/counsel declares as follows:

1. ☐ Petitioner is currently serving a sentence for the felony conviction listed below.
   - ☐ Petitioner is currently in jail or prison.
   - ☐ Petitioner is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of the conviction.

2. ☐ On *(date of conviction):* , petitioner 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. ☐ Petitioner was a member of the U.S. military. Petitioner served in (branch of military):
from (*date of entry into military):* until *(last date served in the U.S. military):*

3B. ☐ Petitioner is currently a member of the U.S. military. Petitioner serves in *(branch of military)*:
and petitioner's entry date was:

4. ☐ As a result of military service, petitioner may be suffering from the following health conditions (*check all that apply*):
   - ☐ Sexual trauma
   - ☐ Post-traumatic stress disorder (PTSD)
   - ☐ Traumatic brain injury (TBI)
   - ☐ Substance abuse
   - ☐ Mental health problems *(list or describe)*:

5. ☐ When petitioner was sentenced, the judge did not consider health conditions resulting from petitioner's military service as a factor in deciding the sentence.

Date:

▶ _____
SIGNATURE OF PETITIONER/DEFENDANT OR ATTORNEY

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 DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)

Penal Code, § 1170.91(b)
www.courts.ca.gov

SPR19-20

Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
1.	Samuel Caez Avenal State Prison Avenal, California	N/I	1. I do believe the proposal addresses the stated purpose clearly.	No response required.
			2. The form I feel can be understood by intended users, veterans in custody with qualifying health conditions.	No response required.
			3. The fact that it is drafted for both attorneys and self-represented litigants is a good thing. This does give eligible veterans the option of acquiring representation if so needed or desired.	No response required.
			4. The title of the form is clear enough to state that veterans are eligible for the mentioned health conditions.	No response required.
			5. The term "health condition" is a good way to word the umbrella in which the conditions are listed. I say that because it takes a bit of the stigma which comes with being labeled mentally ill. Due to pride some eligible veterans may not file if the are to be labeled "mentally ill." Plus, I am guessing that this form will be one which will become public record. Being that it can be viewed by everybody this could further hinder a veteran's ability to gain employment in order to successfully reintegrate back into society.	No response required.
			6. Being that mental health and medical records will need to be provided with this form, it would be very helpful to receive	In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records

	Commenter	Position	Comment	Committee Response
		N/I	information as to how to file these under seal. It would be good to include either the forms needed along with CR-412/MIL-412 or the form numbers. The issue when incarcerated is the lack of resources. I have written the court in my county to request forms or information but only received a letter back telling me to retain an attorney since they provide no legal assistance to inmates. I have also requested the same information from the public defender's office for this AB 865 but have not received a reply. I do not want to suggest that veterans are dumb but when it comes to legal terms and different processes I know most people as a whole tend to be ignorant. It would be nice/helpful to receive instructions in layman terms. I personally get lost when a process begins to use legal terms, most of which I am unfamiliar with.	and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.
			7. As mentioned above, the information sheet would be very helpful. The only place to get any information here is the library. It is unfortunate that they are limited as well. If one does not know the forms needed, it is like attempting to find a needle in a hay's stack. Plus, there is a per page charge for any type of legal copy one requires.	The committee is removing the part of the form requesting submission of relevant records along with the petition, reducing the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
2.	Glenn Valliant Costa Mesa, California	AM	The form and the title are understandable and easy enough to use by self-represented defendants. The phrase "Health Condition" may invite submissions for non-qualifying conditions. "Mental Health Conditions" appears to be what the law specifies and you list on the form. I prefer "Mental Health Conditions", with an additional check box "other" and space to specify. We want to encourage as many as possible to try for resentence, but discourage those clearly ineligible. An info form should definitely be developed to accompany this with suggested additions (and explanations in the info form 1. PC1170.91 resentencing should only be filed if the defendant received mid or max sentence on at least one charge or received an enhancement that might be struck or dismissed by the court. If defendant received minimum term and no sentence enhancement they cannot receive relief. This is not clear. a. The form should include column indicating sentence defendant received for each offense b. The form should instruct and indicate any sentence	No response required. The committee prefers the phrase "health condition" to more accurately capture the enumerated conditions listed in Penal Code section 1170.91(b). In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time as the petition only asks for basic qualifying information. The committee prefers that the petition request basic qualifying information. The committee prefers that the petition request basic qualifying information.

	Commenter	Position	Comment	Committee Response
			enhancement defendant received. 2. Box 7 is checked if documents and records are included as evidence. This should be encouraged in the info form explaining that including records could significantly improve petitioners potential for success. a. I fully agree with your comment "form also mention the process for filing those documents under seal". This would be important and helpful to them. b. I suggest the info form also provide brief recommendations/ instructions on "process for obtaining those documents". Requesting medical records (psychiatric / mental) from CDCR. Mailing to and requesting medical records from VA Medical Center (with addresses). c. Recommend defendant review documents and include any pages found that specifically address conditions under PC1170.91	In response to comments, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records because the statute does not require supporting documentation with the initial filing of the petition.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
3.	Los Angeles County Public Defender by Ricardo D. Garcia, Public Defender Los Angeles County Alternate Public Defender by Erika Anzoategui, Acting Alternate Public Defender	NI	Although the form is written primarily for self-represented litigants, we do not feel that attorney information should be excluded. This would allow both attorneys and self-represented litigants to use the same form. For example, "I (add check box for counsel for or pro per) , (counsel for) , the defendant in the above-entitled case..." is preferred over the current language. A signature line including designation of counsel should be added.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.
			The title appears to adequately describe the purpose of the form. The term "Health Conditions" is more favorable than "Health Problems."	No response required.
			An "INFO" form with basic explanations would be helpful for self-represented litigants. For example, explaining filing under seal or giving the self-litigant the option to seek legal explanation for such filings.	In response to comments on this issue, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
4.	Orange County Bar Association by Deirdre Kelly, President	AM	*Does the proposal appropriately address the stated purpose?* Yes, but see below. *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?* Yes, the form is sufficiently clear to be understood by an unrepresented criminal defendant who may qualify for relief. However, the form does not address a fundamental question nearly all petitioners will have—how do I get legal representation to guide me through this process? Since this is a petition for resentencing, and because a defendant in a criminal action has the right to appointed counsel at a sentencing hearing if indigent, the form should contain a mechanism which allows the defendant to request counsel. We recommend the following: If the court sets a hearing on this petition, I request counsel be appointed to represent me. (check one) I was represented by a court-appointed attorney in this case I either represented myself or was represented by a private attorney in this case but am now requesting the court appoint an attorney. If you check this	No response required. Because this would be a substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider this suggestion during the next proposal cycle.

	Commenter	Position	Comment	Committee Response
			box, please attach form MC-210 [Defendant's Financial Statement] *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'm 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?* The form should be limited to use by self-represented litigants. We believe the purpose of the form is to create a workable, simple document that self-represented litigants to can use to petition the court for consideration under section 1170.91. However, as with nearly all forms, the form itself is limiting by its nature and and is not the best way for attorneys to practice law. Attorneys, their clients and the judicial officers hearing these cases would be better served by robust, original pleadings that clearly spell out why relief is warranted based on the evidence submitted at the hearing. Criminal defense attorneys do this on a regular basis at felony sentencing hearings. There is no reason why it should be any different at a re-sentencing hearing under section 1170.91.	The committee discussed the suggestion and decided to draft the form so that both attorneys and self-represented litigants could use the same form, as courts prefer the uniformity of a standard form.

SPR19-20

Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			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? We express no opinion on this point. *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?* Rather than try to explain procedures for filing confidential documents under seal to self-represented litigants, the better practice would be to remove this option from the form entirely. The statute does not require a petitioner to submit evidence in support of the petition but does require the court to set a hearing at the time the petition is received. That hearing is when the petitioning party should submit evidence to the court. We hope the Criminal Law Advisory Committee gives serious consideration to modifying the form to include an application for appointed counsel, as suggested above. Were that to happen, appointed counsel could move the court to seal confidential records at the hearing. *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?*	No response required. The committee agrees with these suggestions and has incorporated them into the amendments that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Yes. However, we suggest the form also inform potential self-represented litigants that many Public Defender Offices will represent them in these proceedings if they are indigent and encourage them to contact the Public Defender's Office in the county of conviction prior to filling out the form.	As stated earlier, the committee declines to develop an information sheet at this time.
5.	Superior Court of Los Angeles County	AM	Proposed Modifications Form CR-412/MIL-412 The Petition for Dismissal (Military Personnel) (CR-183) should be used as the guide for this form. For example, CR-183 uses the designation of "petitioner," which allows it to be completed by the defendant himself/herself or an attorney acting on the defendant's behalf. - Change "I (name):" to "Petitioner (name):" Information Form: Please add an information form. As the form asks for supplemental documentation including medical records, the information form should provide information regarding the confidentiality of such documents and how those documents should be submitted. *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?* Yes, the form is understandable.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption. The committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records, because the statute does not require supporting documentation with the initial filing of the petition. This reduces the need for an information sheet. Accordingly, the committee declines to develop an information sheet at this time. No response required.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			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?	
			Please see our suggested modifications above.	See response above.
			Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?	
			Yes, the title is clear.	No response required.
			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?	
			Yes, “health conditions” is the best term.	No response required.
			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?	
			As noted above, an Information Sheet would be most helpful for this proposal.	See response above.
			Would the proposal provide cost savings? If so, please quantify.	

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			We do not anticipate cost savings. The petitions will add to the Criminal Division's workload. *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?* Changes to the Case Management System will be needed. As this involves resentencing, Court Order/Finding (COF) codes would need to be created. In addition, event codes would need to be created for the filing of the petition and the hearing of the petition at a minimum. Training would then be required. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Due to the changes required above, three months would not be enough time for implementation.	No response required. No response required. Based on the other comments received, the committee proposes a three month timeframe from Judicial Council approval to its effective date.
6.	Superior Court of Orange County	N/I	*Does the proposal appropriately address the stated purpose?* Yes. *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?* Yes.	No response required. No response required.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			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? Form should include verbiage so that both pro per defendants and attorneys can complete and submit. I, (name) _____ , the ☐ Defendant ☐ Attorney for Defendant in the above-entitled case, declare as follows: 1. ☐ Defendant is currently serving a sentence for the felony conviction listed below. ☐ Defendant is currently in jail or prison. ☐ Defendant is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of this conviction. 2. ☐ On (*date of conviction*): _____ , defendant was convicted of the following felony offenses:	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.

SPR19-20

Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			<table><tr><td>Code</td><td>Section</td><td>Name of offense</td></tr><tr><td></td><td></td><td></td></tr></table> 3A. ☐ Defendant was a member of the U.S. military. Defendant served in (*branch of military*): _____ from (*date of entry into military*): _____ until (*last date served in the U.S. military*): _____ 3B. ☐ Defendant is currently a member of the U.S. military. Defendant serves in (*branch of military*): _____ and defendant's entry date was: _____ 4. ☐ Defendant believes that as a result of his/her military service, he/she is 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. ☐ Defendant believes that, at the time of sentencing, the judge did not consider his/her health condition resulting from his/her military service as a factor in deciding the sentence.	

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			6. ☐ Defendant was sentenced before January 1, 2015. 7. ☐ Relevant records or other documents supporting this claim are attached (for example, military records, conviction documents, mental health treatment records, medical records). I declare under the 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 *Is the title of the form sufficiently clear so that litigants will be able to determine whether it applies to them?* Yes, however they will need to read section 4 of the form or familiarize themselves with 1170.91(b) before determining if their specific health condition is included. Also suggest changing title to "Petition For Resentencing Based On Health Conditions Due To Military Service…" *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?* Health Conditions is an adequate descriptor. *Given that the form suggests providing supporting documentation, including medical*	The committee accepts the recommendation. No response required.

	Commenter	Position	Comment	Committee Response
			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? Our current procedure directs our clerks to produce barcodes with a "confidential" security level when submitting medical reports/records to be imaged so that the public cannot view or access the document. Adding instructions for the defendant regarding the filing of documents under seal may cause confusion. The defendant might assume that the clerk receiving the documents can "seal" the documents, however only a judicial officer has the authority to order the filing of documents under seal.	As explained above, the committee is taking out the portion of the petition asking for attachment of relevant medical records and mental health treatment records.
			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? "INFO" form may not be necessary. The proposed form appears to be straight forward and self-explanatory. The proposed form also references MC-025 if additional space is needed, as well as CR-106 to provide proof of service.	No response required.
			Would the proposal provide cost savings? If so, please quantify. Creating the form would make it more efficient for defendants/attorneys to submit the request, and for the Court to identify what is being	No response required.

	Commenter	Position	Comment	Committee Response
			requested. There may be a time savings which could equate to a cost savings. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* It depends. There could be a new procedure and/or QRG created. Training Staff could be 5 – 10 minutes per person within Operations. There could be docket codes created or modified. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* 3 months should be sufficient, depending on other projects/initiatives in the works. *How well would this proposal work in courts of different sizes?* This proposal should work for Courts of all sizes. This optional form provides a more efficient way to submit this specific request, however the Court can accept requests in the form of correspondence, pleading paper, etc.	No response required. No response required. No response required.
7.	Superior Court of San Bernardino County	A	*Would the proposal provide cost savings?* No. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures*	No response required.

SPR19-20
Petition for Resentencing (Military) (CR-412/MIL-412)

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

	Commenter	Position	Comment	Committee Response
			(please describe), changing docket codes in case management systems, or modifying case management systems? The implementation requirements to the court would be to train clerk's office staff, judicial officers, and judicial assistants; creating procedures; possibly creating new codes in the case management system. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. *How well would this proposal work in courts of different sizes?* The procedure would work, with the biggest impact being volume based on the number of filings at each district.	No response required. No response required. No response required.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	No response required.

Item number: 19

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Motion and Order 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, 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: 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.)
Please note that we have affirmatively decided to capitalize "Moving Party" on form CR-187 to increase readability for the many self-represented litigants who will use the form.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-187 and CR-188

Recommended by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 31, 2019

Contact
Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revisions to two optional Judicial Council forms 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.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Revise *Motion to Vacate Conviction or Sentence* (form CR-187) and *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to incorporate clarifications of timing and procedural requirements consistent with amendments to Penal Code section 1473.7; and

2. Further revise the format of *Motion to Vacate Conviction or Sentence* (form CR-187) so that it is appropriate for use by both self-represented litigants and those represented by attorneys.

The revised forms are attached at pages 4–8.

Relevant Previous Council Action

Optional forms CR-187 and CR-188 were adopted by the Judicial Council effective January 1, 2018, to implement the provisions of Assembly Bill 813 (Stats. 2016, ch. 739) and help individuals and the courts adhere to the procedural requirements of Penal Code section 1473.7.

Analysis/Rationale

Penal Code section 1473.7, adopted effective January 1, 2017 (Assem. Bill 813), 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.

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.) 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.)

Policy implications

The recommended revisions to forms CR-187 and CR-188 will assist courts by providing court users, both self-represented litigants and attorneys, with guidance when applying for postconviction relief under section 1473.7.

Comments

This proposal circulated for comment from April 11 to June 10, 2019. Seven comments were received. The Superior Courts of Los Angeles and San Diego Counties agreed with the proposal, as did the Orange County Bar Association. The Superior Court of Riverside County and the Trial Courts Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee agreed with the proposal if modified. The Superior Court of Orange County and the Los Angeles County Public Defender did not indicate a position.

The committee revised the forms in response to the comments, as described below:

- ***Header check boxes to identify applicable basis for requested relief:*** Both the Superior Court of Riverside County and the Joint Rules Subcommittee recommended modifying the header of forms CR-187 and CR-188 to allow check boxes for the applicable statute, e.g., Motion to Vacate Conviction or Sentence, □ PC § 1016.5 □ PC § 1473.7(a)(1) or □ PC § 1473.7(a)(2). The commenters noted that modifying the forms in this manner would allow courts to keep specific statistics on the number and types of petitions filed, if courts so chose.

In addition, the check boxes would aid self-represented litigants in clarifying the basis for their requests for relief.

- ***Notification of counsel:*** The Los Angeles County Public Defender noted that section 1473.7 requires that counsel alleged to be ineffective must be given notice of the motion and suggested adding that advisement to form CR-187. The committee agreed and incorporated a check box.

- ***Dual-use form:*** The committee included a specific request for comments regarding proposed form CR-187 as a dual-use form by self-represented litigants and attorneys. The Superior Court of Orange County and the Orange County Bar Association each responded with suggestions for revisions to the form so that it could be used by both self-represented litigants and attorneys. The committee agreed with the suggestions and revised the format of the form in response to these comments.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the committee considered revising the form so that it was formatted in a manner that would allow use solely by self-represented litigants. The committee recognized, however, that providing a form that is designed for ease of use by self-represented litigants and that can also accommodate use by attorneys representing litigants would be most effective for the courts. For that reason, the committee recommends formatting form CR-187 as a dual-use form.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of revised forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-187 and CR-188, at pages 4–8
2. Chart of comments, at pages 9–15
3. Link A: Assem. Bill 813; Stats. 2016, ch. 739, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB813*
4. Link B: Assem. Bill 2867; Stats. 2018, ch. 825, § 1, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2867*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 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 NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	***FOR COURT USE ONLY*** DATE: TIME: DEPARTMENT:

MOTION TO VACATE CONVICTION OR SENTENCE

☐ Pen. Code, §§ 1016.5 ☐ Pen. Code, §§ 1473.7(a)(1) ☐ Pen. Code, §§ 1473.7(a)(2)

Instructions—Read carefully if you are filing this motion for yourself

- The term "Moving Party" as used in this form refers to you.
- 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).
- You must file a separate motion for each separate case number.
- 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)* , the Moving Party was convicted of a violation of the following offenses *(list all offenses included in the conviction)*:

CODE	SECTION	TYPE OF OFFENSE *(felony, misdemeanor, or infraction)*

If you need more space for listing offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

Form Approved for Optional Use
Judicial Council of California
CR-187 [Rev. January 1, 2020]

Penal Code, §§ 1016.5, 1473.7
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

2. ☐ **MOTION UNDER PENAL CODE SECTION 1016.5**

a. **GROUNDS FOR RELIEF: The Moving Party requests relief based on the following:**

(1) Before acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise the Moving Party that the conviction might have immigration consequences as required under Penal Code section 1016.5(a).

(2) The conviction that was based on the plea of guilty or nolo contendere may result in immigration consequences for the Moving Party, including possible deportation, exclusion from admission to the United States, or denial of naturalization.

(3) The Moving Party likely would not have pleaded guilty or nolo contendere if the court had advised the Moving Party of the immigration consequences of the plea. *(People v. Arriaga* (2014) 58 Cal.4th 950.)

b. **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 the claim.*)

3. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity**

The Moving Party is not currently in criminal custody (criminal custody includes in jail or prison; on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUNDS FOR RELIEF: Moving Party requests relief based on the following:**

The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged 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 (no contest). (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.) If you are claiming that your conviction or sentence is invalid due to ineffective assistance of counsel, before the hearing is held on this motion you (or the prosecutor) must give timely notice to the attorney who you are claiming was ineffective in representing you.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

3.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 claiming ineffective assistance of counsel, you must state facts detailing what the 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 specific requirements were completed;
(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 the claim.)*

4. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

The Moving Party is 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. **GROUNDS FOR RELIEF: Moving Party requests relief based on the following:**

(1) 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.

(2) The Moving Party discovered the new evidence of actual innocence on *(date):*

b. **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 the claim.)*

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

5. ☐ The Moving Party requests that the court hold the hearing on this motion without the Moving Party's personal presence for the following reasons:

6. The Moving Party requests that the court vacate the conviction or sentence in the above-captioned matter.

7. The Moving Party requests 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 statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF MOVING PARTY OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
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:	
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 ☐ Pen. Code, §§ 1473.7(a)(1) ☐ Pen. Code, §§ 1473.7(a)(2)	*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. ☐ denies the motion on the following basis (specify):

   c. ☐ grants ☐ denies the request that the court hold the hearing *without* the personal presence of the moving party.

   d. ☐ 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]

SPR19-21
Motion and Order to Vacate Conviction or Sentence (form CR-187, CR-188)

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

	Commenter	Position	Comment	Committee Response
1.	Los Angeles County Public Defender Ricardo D. Garcia, Public Defender Erika Anzoategui, Acting Alternate Public Defender	N/I	For the most part, this proposed form correctly states the requirements of Penal Code section 1473.7, however, it omits the requirement that counsel who is alleged to be ineffective has been given notice of the motion which alleges ineffective assistance of counsel. As such, an additional section, 3-c. should be added stating: c. If you are asserting that your conviction or sentence is legally invalid due to ineffective assistance of counsel, you or the prosecution must give timely notice to the counsel who you are asserting was ineffective in advance of the hearing on this motion.	The committee accepts the comment and will recommend adding the proposed information regarding notification of counsel to section 3-a of the Motion to Vacate Conviction or Sentence, form CR-187.
2.	Orange County Bar Association by Deirdre Kelly, President	A	Does the proposal appropriately address the stated purpose? The changes do appropriately address the stated purpose including use by a self-represented litigant. Are the proposed revisions an effective way to address the legislative changes to section 1473.7? The forms are an effective way to incorporate the legislative changes to 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	• No response needed. • No response needed.

	Commenter	Position	Comment	Committee Response
			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 form should not be limited for use only by self-represented litigants. While an attorney using the form may hesitate to sign a motion under penalty of perjury which uses averments as "I am" or "I discovered", counsel can simply strike the "I" leaving the rest of the pleading intact. On the other hand, the form could be modified to the provide alternative check the boxes for the averment of "I" or in the alternative, "Defendant". As with other Judicial Council forms, the use of the "Defendant" instead of "I" does cause confusion for self-represented individuals. However, designing two sets of forms for attorneys and self-represented litigants is inefficient and potentially adds confusion to what is supposed to be a simple method to move the court per 1473.7.	• The committee agrees the form should be clearly designed for use by both self-represented litigants and attorneys, and has incorporated various format changes for this purpose.
3.	Superior Court of Los Angeles County (no name provided)	A	Does the proposal appropriately address the stated purpose?	

SPR19-21

Motion and Order to Vacate Conviction or Sentence (form CR-187, CR-188)

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

	Commenter	Position	Comment	Committee Response
			Yes, the proposal addresses the stated purpose. Are the proposed revisions an effective way to address the legislative changes to section 1473.7?	• No response needed.
			Yes, the proposed revisions are an effective way to address this legislative change.	• No response needed.
			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 committee agrees the form should be clearly designed for use by both self-represented litigants and attorneys, and has incorporated various format changes for this purpose.
			The proposed form is fine as presently constituted.	

SPR19-21
Motion and Order to Vacate Conviction or Sentence (form CR-187, CR-188)

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

	Commenter	Position	Comment	Committee Response
			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. We do not anticipate cost savings. What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. We do not anticipate significant implementation requirements. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient. How well would this proposal work in courts of different sizes? The proposed changes are consistent and provide clarity. Court size should not have any significant impact.	• No response needed. • No response needed. • No response needed. • No response needed.
4.	Superior Court of Orange County (no name provided)	N/I	Request for Specific Comments	

	Commenter	Position	Comment	Committee Response
			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? Yes, it does.	• No response needed.
			• Are the proposed revisions an effective way to address the legislative changes to section 1473.7? Yes. The revisions are well placed and make sense.	• No response needed.
			• 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? I do believe the verbiage does not quite make sense if an attorney were to submit on behalf of the defendant. The dual use could be confusing. If a statement at the beginning were added "I am	• The committee agrees the form should be clearly designed for use by both self-represented litigants and attorneys, and has

	Commenter	Position	Comment	Committee Response
			the defendant / attorney for the defendant in this matter", then using third person terminology throughout the rest of the form (e.g. instead of "I am not currently…" could read "The defendant is not currently…"	incorporated various format changes for this 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. No cost savings would be realized.	• No response needed.
			• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. No training necessary, just a staff update. Processes already exist to process these scenarios.	• No response needed.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	• No response needed.
			• How well would this proposal work in courts of different sizes? I think it would work well.	

SPR19-21

Motion and Order to Vacate Conviction or Sentence (form CR-187, CR-188)

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

	Commenter	Position	Comment	Committee Response
				• No response needed.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	No response needed.
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy – Legal Services	AM	Modify the face of CR-187 and CR-188 to allow check boxes for the applicable statute, e.g. Motion to Vacate Conviction or Sentence • PC §1016.5 • PC §1473.7(a)(1) or • PC §1473.(a)(2) Modifying the forms as noted above would allow a court to keep specific stats on the number and type of petition filed, if court's are interested in doing so.	The committee appreciates the comment and will recommend adding the proposed check boxes to the header of Motion to Vacate Conviction or Sentence, form CR-187, and Order on Motion to Vacate Conviction or Sentence, form CR-188.
7.	TCPJAC/CEAC Joint Rules Subcommittee	AM	JRS notes the proposal is required to conform to a change of law. Suggested modification(s): Modify the face of CR-187 and CR-188 to allow check boxes for the applicable statute, e.g. Motion to Vacate Conviction or Sentence □ PC §1016.5 □ PC §1473.7(a)(1) or □ PC §1473.(a)(2) Modifying the forms as noted above would allow a court to keep specific stats on the number and type of petition filed, if courts are interested in doing so.	The committee agrees and will recommend adding the proposed check boxes to the header of Motion to Vacate Conviction or Sentence, form CR-187, and Order on Motion to Vacate Conviction or Sentence, form CR-188.

Item number: 20

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 8/21/19

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Legal Accuracy of Forms
Revise forms JV-180, JV-364, and JV-618

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Juvenile Law: Legal Accuracy of Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms JV-180, JV-364, and JV-618

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 14, 2019

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

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 in child welfare cases. In compliance with Senate Bill 190 (Mitchell; Stats. 2017, ch. 678), references to fees associated with probation conditions and out-of-home placement of a child will be removed from one juvenile justice form. Two child welfare related forms will be revised: one to include required title IV-E findings and the other to comply with permanency goals established by Continuum of Care Reform (CCR).

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Revise *Waiver of Rights* (form JV-618) to delete the reference to payment of "fees" and reflect the correct Penal Code section related to firearm restrictions, which changed since the form was last revised;

2. Revise *Termination of Dependency* (form JV-364) to clarify that the form is only to be used when the permanent plan achieved is adoption and to include two title IV-E findings, the reasonable efforts finding and the permanent plan finding; and

3. Revise *Request to Change Court Order* (form JV-180) to include a check box in item 2 that allows parents to request statutorily authorized resumption of services and to change gendered terms to nongendered terms.

The revised forms are attached at pages 4–9.

Relevant Previous Council Action

Effective January 1, 2018, the Judicial Council approved revisions to 18 juvenile law forms, including *Termination of Dependency* (form JV-364) and *Request to Change Court Order* (form JV-180), to bring them into compliance with by Senate Bill 794 (Stats. 2015, ch. 425), frequently referred to as Continuum of Care Reform (CCR).

Analysis/Rationale

The committee recommends revising form JV-618 to ensure it remains legally accurate. Currently, form JV-618 states that the child may be required to pay fees. However, SB 190 has rescinded the requirement that delinquent wards pay fees; therefore, the form must be revised. This form also contains a citation to an outdated Penal Code section related to firearm restrictions; hence, a revision is needed to reflect the current Penal Code section.

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.[1] 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 committee recommends revising form JV-180 because 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. Currently, form JV-180 does not include a check box to request that services be resumed. Due to the statutory change implemented by CCR, it is necessary to revise form JV-180 to reflect current law and provide a mechanism for parents to have their request for additional services heard.

[1] See title 42 United States Code section 671 et seq., which establishes guidelines for receipt of federal dollars for foster care.

While revising form JV-180 to comply with the law, the committee also recommends revising it to use the nongendered terms “parent’ and “sibling” for mother, father, sister, and brother.

Policy implications

The recommended revisions to these three forms are consistent with the recent and ongoing movement to make juvenile justice less punitive and to focus on permanency and normalcy for both dependent and delinquent youth in out-of-home placement.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle from April 11 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

The committee received seven comments on this proposal. Four of the seven commenters agreed with the proposal and the remaining three agreed if slight modifications were made. A chart with the full text of the comments received and the committee’s responses is attached at pages 10-21. Most of the comments suggested minor or technical changes, which the committee accepted without debate. Two commenters suggested revisions to form JV-618 that would change the plain language of the form. Because the wording on these forms was developed by a multidisciplinary working group to ensure accuracy and comprehension by young people, the committee declined to make changes that would substantially change the wording on the form.

Alternatives considered

Other than correcting minor typographical errors, alternatives were not considered because the proposed revisions to the forms are necessary to maintain their legal accuracy.

Fiscal and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Forms JV-180, JV-364, and JV-618, at pages 4–9
2. Chart of comments, at pages 10–21

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL 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:	
WAIVER OF RIGHTS—JUVENILE JUSTICE	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 (months/years): _____
   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. _____

Form Approved for Optional Use
Judicial Council of California
JV-618 [Rev. January 1, 2020]

Cal. Rules of Court, rule 5.778
www.courts.ca.gov

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.:	
EMAIL 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

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

This form can be used to ask the court to 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.

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 sibling 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*

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch, Director of Governmental Affairs Sacramento, CA	A	FLEXCOM agrees with this proposal.	No response required.
2.	Joint Rules Subcommittee of TCPJAC/CEAC	AM	The JRS notes that the proposal is required to conform to a change of law. The proposal should be implemented to also comply with federal mandates for reimbursement of funds and to avoid disruption in services for youth.	No response required.
3.	Superior Court of Los Angeles County	A	Request for Specific Comments Does the proposal appropriately address the stated purpose? -Yes, the proposal addresses the stated purpose. Would the proposal provide cost savings? If so, please quantify. -We do not anticipate cost savings. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, three months would be sufficient.	 No response required. While this proposal may not result in costs savings, nor is it anticipated to result in additional costs. No response required. No response required.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
4.	Superior Court of Orange County	AM	**Rule 5.730 Adoption** ▪ Currently, the rule does not mention findings are required to claim federal funding. It is recommended that Title IV-E be cross referenced in the rule.	The rule is not currently part of this proposal. Amending the rule would necessitate circulating it for comment. The committee declines amending the rule at this time but will make note of the suggestion for future revisions to the rule.
			Waiver of Rights – Juvenile Delinquency (JV-618) ▪ It is recommended the form be retitled to, Waiver of Rights – Juvenile Justice. This would be consistent with other Judicial Council juvenile forms that have been revised to replace the word "delinquency" with "justice". For example, the Juvenile Justice Court – Information for Parents (JV-060-INFO) form.	The committee agrees with this recommendation and will change the title of the form.
			▪ For section 2a, replace the word "agreeing" with "admitting" to be consistent with language used within the section.	The committee appreciates this suggestion. However, the committee declines to make the recommended revision because the wording on these forms was developed by a multidisciplinary working group after reviewing local forms to ensure accuracy and comprehension by youth.
			▪ For section 4b, it is recommended that a field be added at the end of the sentence that reads, "_____ months/years" to indicate the maximum amount of time the youth could be committed.	The committee agrees that it would be clearer to include "months/years" at the end of item 4b and will make that change.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			▪ For section 4f, it is recommended the sentence be revised to read, "I may be required to register to be listed in a database under:"	The committee agrees that it would be clearer to include the proposed language in item 4f.
			▪ For section 4g, "medical expenses" should be added as one of the items parents or legal guardians may have to pay for. Also, are juveniles subject to penalty and assessments on fines and fees? If so, it should be added as well.	Item 4g was revised purely to comply with SB 190; these suggested revisions are beyond the scope of this proposal.
			▪ For section 5c, it is recommended the sentence be revised to, "The right to testify or speak up for myself in court after I have sworn to tell the truth."	The committee appreciates this suggestion. However, the committee declines to make the recommended revision because the wording on these forms was developed by a multidisciplinary working group after reviewing local forms to ensure accuracy and comprehension by young people.
			▪ For section 5e, replace the word "come" with "ordered".	As stated above, these forms were developed to be written in a more plain language style that would be accurate and more understandable to young people.
			▪ On page two, it is recommended the first sentence of the declaration be revised to, "I declare under penalty of perjury, which means I could be charged and punished for lying under oath, that my attorney has gone	Please see the response to the previous two comments.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			over this form with me, explained what it means, and answered my questions. ▪ It is recommended that a Declaration of Prosecutor be added to page two. This would allow the prosecutor to sign the form when a disposition is negotiated. **Request for Specific Comments** Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings. What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms. Procedures may also require revision. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, three months would be sufficient time for implementation.	This proposed revision is beyond the scope of this proposal. While this proposal may not result in costs savings, nor is it anticipated to result in additional costs. The committee agrees that these are the likely implementation requirements. No response required.
5.	Superior Court of Riverside County By: Susan Ryan Chief Deputy – Legal Services	A	Does the proposal appropriately address the stated purpose? Waiver of Rights (JV-618)-Yes, the proposal would make this form more accurate pursuant to SB-190 by removing reference to the "payment of fees" in item 4g as minors are no longer ordered to pay fees associated with out-of-home	No response required.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			placement, drug testing, or home detention programs. Termination of Dependency in Adoption (JV-364) Yes, adding the Title IV-E findings of "reasonable efforts" and "permanent plan finding" will the make the form comply with requirements for federal funding and Continuum of Care Reform ("CCR"). Request to Change Court Order (JV-180) Yes, adding the box in item 2 to request a resumption of unification services pursuant to WIC 366.3(f) will make the form legally accurate because CCR revised WIC 366.22(a)(3) to include "return home" as a permanent plan option for children in out-of-home care when reunification services are terminated. Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Implementation would be minimum. Would need to inform judicial officers, staff and justice partners of the updates to the JCC forms (JV-618, JV-364 and JV-180). Would three months from Judicial Council approval of this proposal until its effective date	No response required. No response required. While this proposal may not result in costs savings, nor is it anticipated to result in additional costs. The committee agrees that these will be the implementation requirements. No response required.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? The same notification of the form updates would likely need to occur in any size court. The proposals should work well for courts of any size.	The committee agrees with the assessment that implementation of this proposal will not vary based on court size.
6.	Superior Court of San Bernardino County Executive Office 247 W. Third Street, 11th Floor San Bernardino, CA 92415-0302 909-708-8747 ExecutiveOffice@sb-court.org	A	Form JV618 – Waiver of Rights – Optional form – it is like a plea bargain – it has information on advising them of their rights, immigration, sex offender, etc. Comment: 4 (g) – should this say restitution in lieu of what is described in this section? Form JV364 – Termination of Dependency in Adoption – Mandatory Form which now includes Title IV Findings as to Reasonable efforts and permanent plan to ensure that the form contains the required federal findings. Also the title was changed to clarify that the form is only to be used when the permanent plan was achieved in adoption. Form JV180 – Request to Change Court Order – Adds check box for resumption of reunification services. It is also proposing to use the non-gendered terms “parent” and “sibling” for mother, father, sister and brother. Request for Specific Comments • Does the proposal appropriately address the stated purpose? Yes	Item 4(g) is being revised purely to comply with SB 190. This is an accurate statement of the revisions proposed. No further response required. This is an accurate statement of the revisions proposed. No further response required. No response required.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			• Would the proposal provide cost savings? No	While this proposal may not result in costs savings, nor is it anticipated to result in additional costs.
			• 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? • JV618 - Notify judicial officers, justice partners, court staff; add to procedures as • JV364 – Notify judicial officers, justice partners, court staff; add to adoption procedures/dependency procedures • JV180 – Inform judicial officers, court staff – information only	The committee agrees that these will be the implementation requirements.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required.
			• How well would this proposal work in courts of different sizes? It should be the same no matter the size of the court	The committee agrees with the assessment that implementation of this proposal will not vary based on court size.
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	1. Does the proposal appropriately address the stated purpose? Yes.	No response required.
			2. Would the proposal provide cost savings? Yes.	No response required.

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

	Commenter	Position	Comment	Committee Response
			3. What would the implementation requirements be for courts? Informing bench, staff, and attorneys of changes. 4. Would three months provide sufficient time for implementation? Yes. 5. How well would this proposal work in courts of different sizes? Probably very well. **Form JV-618** **Title**: Change "DELINQUENCY" to "JUSTICE." WAIVER OF RIGHTS – JUVENILE ~~DELINQUENCY~~ JUSTICE **Page 1, Item 2.a.:** Add "I did" (for consistency with item 2.b.) and additional suggested edits to simplify language. admit the charge(s), which means ~~that~~ I ~~am~~ agree~~ing~~ that I did what the petition says I did. **Page 1, Item 2.b.:** Additional suggested edits to simplify language. plead no contest, which means ~~that~~ I do not want to fight my case at a trial, but I'~~m~~ do not agree~~ing~~ that I did what the petition says I did.	The committee agrees that these will be the implementation requirements. No response required. The committee agrees with the assessment that implementation of this proposal will not vary based on court size. The committee has made this change and some of the minor revisions for clarity listed below, as noted. The committee declines to make all the suggested revisions because the wording on these forms was developed by a multidisciplinary working group after reviewing local forms to ensure accuracy and comprehension by young people.

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			Page 1, Item 4: Add "or plea." I understand the following consequences of my admission or plea: **Page 1, Item 4:** Additional suggested edits to simplify language. I understand the following ~~consequences~~ could happen because of my admission or plea: **Page 1, Item 4.c.:** Add "be." … and never be allowed to return (exclusion) and/or never be allowed to become a United States citizen. **Page 1, Item 4.f .:** Add "member." Penal Code section 186.30 (gang member). **Page 2, Item 6:** Change "crime(s)" to "one or more crimes. … I will have one or more crime~~(s)~~s on my record that are "Strike" offenses under the Three Strikes Law. **Page 2, declaration:** Suggested edit. … and I ~~am~~ admit~~ting~~ to doing what the petition says I did because I want to …	

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			Page 2, declaration of interpreter: Suggested edits for consistency and accuracy. The primary language of the ~~child~~ youth is I certify that I interpreted this form for the ~~parent or legal guardian~~ youth in ~~that person's~~ the youth's primary language to the best of my ability. **Page 2, declaration of attorney:** Suggested edit for consistency. I am the attorney for the ~~child~~ youth. … Based on my conversation with ~~the minor~~ my client, I am satisfied … . **Page 2, order and finding:** Suggested edits for consistency. I have spoken with the ~~child~~ youth, reviewed the waiver form, and find that the ~~child~~ youth 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~~ youth has knowingly, intelligently, and voluntarily waived his/her rights and that there is a factual basis for the ~~minor's~~ youth's admission.	The committee agrees that "minor" should be revised to either "child" or "my client."

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

	Commenter	Position	Comment	Committee Response
			IT IS ORDERED that the ~~minor's~~ youth's admission be accepted and entered in the minutes of this court. … **Form JV-364** First two sentences: Add "court finds the" to ensure title IV-E compliance. The court finds 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 court finds the permanent plan of adoption has been achieved. N.B.: **CRC 5.730(g)** will need to be amended to reflect the new name of this form. If the petition for adoption is granted, the juvenile court must dismiss the dependency, terminate jurisdiction over the child, and vacate any previously set review hearing dates. A completed *Termination of Dependency for Adoption (Juvenile)* (form JV-364) must be filed in the child's juvenile dependency file. **Form JV-180** **Page 2:** Suggested edits.	

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

SPRING 19-22

Juvenile Law: Legal Accuracy of Forms (Revise forms JV-180, JV-164 and JV-618)

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

	Commenter	Position	Comment	Committee Response
			Remove the closed parentheses in items 5 a, b, and c. Change "brother or sister" to "sibling" for consistency.	 The committee agrees with this revision and will make the change.

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

Item number: 21

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Juvenile Law: Out-of-County Placements

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.614; revise form JV-555

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
Kerry Doyle, Attorney
415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 5.614 to ensure it conforms to the new statutory requirements;
2. Amend rule 5.614(b) by adding a cross-reference to new Welfare and Institutions Code section 361.2(h)(2)(A);

3. Amend rule 5.614(d) with the correct reference to Welfare and Institutions Code section 224.3 and amend rule 5.614(f) to add a paragraph requiring that notice of the hearing comply with that section;
4. Amend rule 5.614(e) to delete the time frame for written notice specified in Welfare and Institutions Code section 361.2(h) and replace it with a cross-reference to that section;
5. Amend the title of rule 5.614 to read "Out-of-county placements";
6. Amend the title of chapter 7 (in division 3 of title 5 of the rules) to read "Intercounty Transfers; Out-of-County Placements; Interstate Compact on the Placement of Children"; and
7. Revise *Notice of Intent to Place Child Out of County* (form JV-555) to indicate in the instructions the new time frames for notice and objection if the child is transitioning from a temporary placement facility.

The text of the amended rule and the revised form are attached at pages 5–8.

Relevant Previous Council Action

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 the child's attorney to object to the move. The Judicial Council, effective January 1, 2019, amended rule 5.610 (Transfer-out hearing), repealed and adopted rule 5.614, 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 AB 1688 regarding who a child welfare agency must notice when moving a foster child to a different county.

Analysis/Rationale

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 recently amended rule 5.614 and recently revised form JV-555 inaccurate.

Rule 5.614

The committee recommends amending rule 5.614 to ensure it conforms to the requirements in Welfare and Institutions Code section 361.2(h)[1] that were amended by AB 1930. The committee recommends amending rule 5.614(b) to reflect the new provision that the notice required before placement may be waived if certain circumstances exist,[2] by cross-referencing the new section

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] 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

361.2(h)(2)(A). The committee recommends amending the rule to delete the time frame for written notice specified in section 361.2(h) and to replace it with a cross-reference to that statute. (See rule 5.614(e).) 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.

For consistency with statutory requirements, the committee also recommends amending rule 5.614 to correct the statutory reference to section 224.3 and to add a paragraph requiring that notice of the hearing comply with section 224.3 if notice is to be served on the child's identified Indian tribe and Indian custodian. (See rule 5.614(d) and (f) respectively.) Additionally, the committee recommends that the title of rule 5.614 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 committee also recommends that the first half of the title of chapter 7 be changed from "Intercounty Transfers and Placements" to "Intercounty Transfers; Out-of-County Placements."

Notice of Intent to Place Child Out of County (form JV-555)

The committee recommends revising the 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.

Policy implications

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal amends the rules of court to include statutory references rather than a paraphrase of the full statutory text. This approach should reduce the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Seven organizations provided comment: five agreed with the proposal, one agreed with the proposal if modified, no commenters opposed the proposal, and one did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 9–13.

---

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).)

Alternatives considered

For this proposal, the committee did not consider not amending the rule or revising the form, because the current rule and form would be inaccurate and conflict with recent statutory amendments to section 361.2(h).

Fiscal and Operational Impacts

The recommended rule amendments and form revisions are intended to update procedures that were implemented by statutes that became effective January 1, 2017. Courts are already receiving objections to and setting hearings on proposed out-of-county placements under that law; this proposal will not increase that workload. Similarly, the written notice requirements to parents and guardians have been in place for many years and those to the child's attorney and the child aged 10 or older have been in place since January 1, 2017; therefore, this recommendation should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

One large court commented that there would be no implementation requirements. Another large court commented that judges and staff would need to be notified of the changes in the rule and form, but no changes would be needed on procedures or in the case management system. A third large court similarly commented that the implementation requirements would be notifying judicial officers, staff, and justice partners of the change to form JV-555 and rule 5.614. A fourth large court commented that the implementation requirements would be notifying judicial officers, justice partners, and court staff, and revising procedures. This court would need to create a new action code and hearing code in its case management system. A fifth large court commented that the implementation requirements would be informing bench, staff, and attorneys of the changes.

Of the courts that commented on whether the proposal would provide cost savings, one commented that the proposal would provide cost savings, and four commented that it would not.

Attachments and Links

1. Cal. Rules of Court, rule 5.610, at pages 5–6
2. Form JV-555, at pages 7–8
3. Chart of comments, at pages 9–13
4. Link A: Assembly Bill 1930 (Stone; Stats. 2018, ch. 910), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1930*

Rule 5.614 of the California Rules of Court is 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) Method of service

The agency must serve notice of its intent to place the child out of county as follows:

(1) Notice must be served by either first-class mail, sent to the last known address of the person to be noticed; electronic service in accordance with Welfare and Institutions Code section 212.5; or personal service at least 14 days before the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given;

(2) Notice to the child's identified Indian tribe and Indian custodian must comply with the requirements of section 224.~~2~~3; and

(3) *Proof of Notice* (form JV-326) must be filed with the court before any hearing on the proposed out-of-county placement.

(e) Objection to proposed out-of-county placement

Each participant who receives notice under (b)(1)–(3) may object to the proposed removal of the child, and the court must set a hearing as required by section 361.2(h).

(1) An objection to the proposed ~~intercounty~~ 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) Notice of hearing on proposed removal

If an objection is filed, the clerk must set a hearing, and notice of the hearing must be as follows:

(1) If the party objecting to the removal is not represented by counsel, the clerk must provide notice of the hearing to the agency and the participants listed in (b);

(2) If the party objecting to the removal is represented by counsel, that counsel must provide notice of the hearing to the agency and the participants listed in (b);

(3) Notice must be by either first-class mail, sent to the last known address of the person to be noticed; electronic service in accordance with Welfare and Institutions Code section 212.5; or personal service; ~~and~~

(4) Notice to the child's identified Indian tribe and Indian custodian must comply with the requirements of section 224.3; and

~~(4)~~(5) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(g)–(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: _____

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*

SPRING 19-23

Juvenile Law: Out-of-County Placements (Amend Cal. Rules of Court, rule 5.614; revise form JV-555)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch | Director of Governmental Affairs *Sacramento, CA*	A	FLEXCOM agrees with this proposal.	No response required.
2.	Orange County Bar Association By: Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? Yes.	No response required.
3.	Superior Court of Los Angeles County	A	Request for Specific Comments Does the proposal appropriately address the stated purpose? -Yes, the proposal addresses 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. -We do not anticipate cost savings. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -None.	 No response required. No response required. No response required. No response required.

	Commenter	Position	Comment	Committee Response
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, two months would be sufficient. How well would this proposal work in courts of different sizes? -This proposal is not likely to have difference in impact on courts of various sizes.	No response required.
4.	Superior Court of Orange County		**Rule 5.614 Out-of-County Placements** ▪ It may be beneficial to define "temporary placement facility". **Request for Specific Comments** Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings. What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, two months would be sufficient time for implementation.	The use of the phrase "temporary placement facility" on *Notice of Intent to Place Child Out-Of-County* (form JV-555) directly tracks the statutory language and it is not within the purview of the council to define this. No response required. No response required. No response required.
5.	Superior Court of Riverside County By: Susan Ryan	A	Does the proposal appropriately address the stated purpose?	No response required.

SPRING 19-23

Juvenile Law: Out-of-County Placements (Amend Cal. Rules of Court, rule 5.614; revise form JV-555)

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

	Commenter	Position	Comment	Committee Response
	Chief Deputy – Legal Services		Yes, the revision to the instructions and to item 3 of the Notice of Intent to Place Child Out of County (JV-555) form will make the form comply to the change approved by AB 1930. The revisions to Rule 5.614 also comply with AB 1930 by referencing WIC 361.2(h). Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Notifying judicial officers, staff and justice partners of the changes to form JV-555 and Rule 5.614. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The same notification of the form updates would likely need to occur in any size court. The proposals should work well for courts of any size.	 No response required. No response required. No response required. No response required.
6.	Superior Court of San Bernardino County By:Executive Office	A	Optional form JV555 – This revision updates emergency placement and a new time frame for notice and the filing of an objection if the minor is being transferred from a temporary placement facility. Request for Specific Comments	No response required.

	Commenter	Position	Comment	Committee Response
			• Does the proposal appropriately address the stated purpose? Yes	No response required.
			• Would the proposal provide cost savings? No	No response required.
			• What would the implementation requirements be for courts – for example, training, staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Notify judicial officers, justice partners, and court staff and revise procedures. Create new action code and hearing code in our case management system (JNET).	No response required.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required.
			• How well would this proposal work in courts of different sizes? It should be the same no matter the size of the court.	No response required.
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	1. Does the proposal appropriately address the stated purpose? Yes.	No response required.
			2. Would the proposal provide cost savings? Yes.	No response required.
			3. What would the implementation requirements be for courts? Informing bench, staff, and attorneys of changes.	No response required.
			4. Would two months provide sufficient time for implementation? Yes.	No response required.

	Commenter	Position	Comment	Committee Response
			5. How well would this proposal work in courts of different sizes? Probably very well. **Rule 5.614** **Subd. (b)**: Delete comma after "section 361.4 are met~~,~~" 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, county, the agency must notify the following ~~participants~~ of the proposed removal: **Subd. (d)(2)**: Change "224.2" to "224.3." (2) Notice to the child's identified Indian tribe and Indian custodian must comply with the requirements of section 224.~~2~~3; and **Subd. (f):** Query -- Should a paragraph be added to require notice of the hearing on proposed removal to comply with section 224.3 if notice is to be served on the child's identified Indian tribe and Indian custodian? **Form JV-555** No comment.	No response required. The committee agrees with this suggestion and has deleted the comma from the proposed rule. The committee agrees with this suggestion and has updated the proposed rule with the correct statutory reference. The committee agrees with this suggestion and has amended the rule to include a statutory cross-reference to notice requirements for the child's identified Indian tribe and Indian custodian. No response required.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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.)

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Juvenile Law: Competency

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.645; renumber rule 5.645(a)–(c) as rule 5.643

Recommended 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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 14, 2019

Contact
Kerry Doyle, Attorney
415-865-8791
kerry.doyle@jud.ca.gov
Tareq Nazamy, Senior Analyst
415-865-7666
tareq.nazamy@jud.ca.gov

Executive Summary

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 child 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 child's competency to understand the court proceedings.

Recommendation

The Collaborative Justice Courts Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2020:

1. Renumber California Rules of Court, rule 5.645(a)–(c) as rule 5.643; and

2. Amend rule 5.645 to address expert qualifications and court proceedings for juvenile competency evaluations.

The text of the amended rule is attached at pages 8–13.

Relevant Previous Council Action

The Judicial Council adopted what is now rule 5.645, effective January 1, 1999, as rule 1498. It was renumbered and amended effective January 1, 2007. It was further amended effective January 1, 2012 to meet the requirement in Welfare and Institutions Code section 709 (added by Assem. Bill 2212; Stats. 2010, ch. 671, § 1) that the Judicial Council develop and adopt rules regarding the qualifications of experts who evaluate children when the court or child's counsel raises the issue of the child's competency in any juvenile delinquency proceeding.[1]

Analysis/Rationale

Assembly Bill 1214 (Stone; Stats. 2018, ch. 991) revises sections 709 and 712, regarding a child's competency to understand the court proceedings, to expand the duties of an expert evaluating the child whose competency is in doubt. The bill (*see Link A*) also requires the Judicial Council to adopt a rule of court relating to the qualifications of those experts, in consultation with specified stakeholders. The bill also mandates the Judicial Council to develop and adopt rules to implement the other requirements in section 709(b), also in consultation with specified stakeholders.

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 committees recommend that the subdivisions of current rule 5.645 that address the procedures for commitment to a county facility—when the court believes a child has a mental disability or may have a mental illness—be renumbered as rule 5.643. References to "mental retardation" would be replaced with "developmental disability." The remainder of the rule would be unchanged from what is now in subdivisions (a)–(c) of rule 5.645.

Rule 5.645

The committees recommend that the remainder of current rule 5.645 be amended to address expert qualifications and court proceedings for competency evaluations.

The committees recommend that subdivision (a) (currently subdivision (d)) of the rule be amended to remove the reference to Penal Code section 1367, as this section addresses an adult's

[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.

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 competency evaluations of juveniles.

Subdivision (c) would be added to govern the requirements for the court-appointed expert when the child refuses an interview.

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 child's counsel.

Subdivision (f) would be added to identify the requirements for the mandate that the expert gather a developmental history of the child.

Subdivision (g) would be added to govern the requirements for the expert's written report regarding the child's competency to stand trial.

Additionally, the Advisory Committee comment to the rule would be deleted as it is misleading and does not accurately reflect the procedure for obtaining regional center services.

Policy implications

The committees considered how to best implement AB 1214, which required the development of a rule of court with specified stakeholders.

The proposed rule of court maintains the high level of training and experience requirements that competency evaluators must meet. It also requires a face-to-face interview of the child, a consult with the child's counsel, and detailed written report requirements including a developmental history of the child and recommendations for appropriate services. This proposal will result in better and more comprehensive evaluator reports which will assist the judicial officer in determining whether the child is competent, and if found incompetent will inform the judicial officer's decisions about orders for mental health services as well as at the hearings reviewing those services.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle, from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks,

attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocates programs, and other juvenile and family law professionals. Additionally, it was provided to the stakeholders who helped develop the proposed rule with an invitation to distribute it as they wished. Four courts, two organizations, and one individual provided comment: two agreed with the proposal, two agreed with the proposal if modified, no commenters opposed the proposal, and three did not indicate a position. A chart with the full text of the comments received and the committees' responses is attached at pages 14–34.[2]

As circulated for public comment the term "mentally retarded" was replaced with "intellectually disabled." One commenter suggested that this phrase be changed to "has a developmental disability" to reflect the preferred usage that the person "has a disability" instead of referring to them as "developmentally disabled," thus reflecting that the person is more than their disability. The committee agreed with this suggestion, and also replaced "intellectual disability" with "developmental disability" in response to this comment and to track the statutory language.

As circulated for public comment, the rule allowed for an interview of the child, if an in-person interview was not possible due to distance, to be conducted remotely, using videoconference or another form of remote electronic communication. The intent was that this would decrease custodial time for children who lived in more remote areas. One commenter was opposed to allowing evaluator interviews that are not face-to-face. After much discussion, the committees concluded that children are not comfortable in remote communication systems and this could skew results. There also would be much of the child's demeanor and behavior that the evaluator would not be able to observe. It is also not possible to control what is going on outside of camera range, such as eavesdropping staff or other environmental issues that may affect testing. The committees concluded that until the medical or psychological profession established guidelines in this area, it was not appropriate to provide for it in the rule.

Assembly Bill 1214 amended section 709 to require the evaluator to consult with the child's counsel. As circulated for public comment, the proposed rule required that consultation to include three questions. Two commenters were opposed to requiring specific questions of the child's counsel. The committees considered removing the questions and discussed the potential for interference with the confidential attorney-client relationship. However, the committees concluded that since the child's counsel often has the most information about the child and that evaluators routinely do not consult with the child's counsel, it was important to include these minimal, basic questions all evaluators should be asking. The committees made great efforts in the language of the rule to protect the attorney-client privilege.

[2] There is also an attachment to the comment chart. One policy organization submitted proposed amendments to the rule text that corresponded with the substantive reasons given for the suggested rule changes. The substantive reasons for the suggested rule changes and the committees' responses are in the comment chart. The suggested changes to the rule text are contained in Attachment A to the comment chart.

One of the more robust of the committees' 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 the rules of court. Section 101(b) defines "child or minor" as a person under the jurisdiction of the juvenile court under section 300, 601, or 602, but most children in delinquency court are older and do not like to be called "child." The proposal circulated for public comment using the term "minor" and sought specific comment on which term to use in the rules. After public comment, the committees also considered using the term "youth" in the rules. However, this term also is not defined in the rules of court. Any definition of the term would be an important substantive change to the proposal, and public comment should be sought before the council defines the term. The committees resolved to continue to use the word "child" in the proposed rules.

Alternatives considered

The committees discussed multiple potential rule topics, several of which the committees decided against developing.

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 instead 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 left to the discretion of 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.[4] The committees decided against proposing such an amendment, concluding in part that the requirements for a Judicial Council–certified interpreter could be too difficult to meet, particularly in smaller counties and for rarer languages. The committees also noted that the interpreters used for mental health evaluations are more akin to medical interpreters than interpreters for court proceedings.

---

[3] Rule 5.502(5) provides: "'Child' means a person under the age of 18 years."

[4] Specifically, the committees reviewed Government Code section 68561 et seq. and rule 2.893.

"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.

School psychologists. The committees discussed whether rule 5.645 should be amended to allow school psychologists to be appointed as experts in competency proceedings. This change 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 not all school psychologists 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.

Fiscal and Operational Impacts

It is important to note that the new legislative mandates regarding evaluators will likely increase costs to the courts and counties, with no additional funding made available. 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 decisionmaking.

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.[5]

There is also the potential for increased litigation costs 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 longer time frames likely will be needed to complete the reports because of the additional requirements to interview the child's counsel, attempt to

[5] 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."

interview the child 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.

Again, however, a benefit is that the reports received will be of much higher quality than under current standards and will be more useful for judicial decisionmaking. The reports will be better and more comprehensive which will assist the judicial officer in determining whether the child is competent, and if found incompetent will inform the judicial officer's decisions about orders for mental health services as well as at the hearings reviewing those services.

Attachments and Links

1. Cal. Rules of Court, rules 5.643 and 5.645, at pages 8–14
2. Chart of comments, at pages 15–34
3. Attachment A: Attachment to Chart of Comments, at pages 35–45
4. Link A: Assembly Bill 1214, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1214

Rule 5.645 of the California Rules of Court is amended, and subdivisions (a)–(c) are renumbered as rule 5.643, effective January 1, 2020, to read:

Rule ~~5.645~~ 5.643. Mental health or condition of child; court procedures

(a)–(b) * * *

(c) Findings regarding ~~mental retardation~~ developmental 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 ~~is mentally retarded~~ has a developmental disability 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 ~~as a mentally retarded person~~ who has a developmental disability to the State Department of Developmental Services for placement in a state hospital.

(2) If the professional finds that the child ~~is not mentally retarded~~ does not have a developmental disability, the child 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 is subject to the jurisdiction of the appropriate court under a petition for commitment of a ~~mentally retarded~~ person who has a developmental disability, or under remand for 90 days for intensive treatment or commitment ordered by that court.

Rule 5.645. Mental health or condition of child; competency evaluations

~~(d)~~(a) Doubt as to ~~capacity to cooperate with counsel~~ child's competency (§§ 601, 602, 709~~; Pen. Code, § 1367~~)

(1) If the court finds that there is substantial evidence ~~that~~ regarding a child 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 child's competency as defined in section 709, the court must suspend the proceedings and conduct a hearing regarding the child'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 child and determine whether the child 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 child 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.

~~(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~~ Be familiar with 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, 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~~.~~; and

(G) Be familiar with juvenile competency remediation services available to the child.

~~(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 child

The expert must attempt to interview the child face-to-face. If an in-person interview is not possible because the child refuses an interview, the expert must try to observe and make direct contact with the child to attempt to gain clinical observations that may inform the expert's opinion regarding the child's competency.

(d) Review of records

(1) The expert 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 expert to review, including who will obtain and provide the records to the expert.

(e) Consult with the child's counsel

(1) The expert must consult with the child's counsel as required by section 709. This consultation must include, but is not limited to, asking the child's counsel the following:

(A) If the child's counsel raised the question of competency, why the child's counsel doubts that the child is competent;

(B) What has the child's counsel observed regarding the child's behavior; and

(C) A description of how the child interacts with the child's counsel.

(2) No waiver of the attorney-client privilege will be deemed to have occurred from the child's counsel report of the child's statements to the expert, 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 child 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 child;

(2) When the child 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 expert must examine the child and advise the court on the child's competency to stand trial. The expert's report must be submitted to the court, to the counsel for the child, 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 child 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 including those required by section 709(b)(3);

(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 child face-to-face and a detailed account of any accommodations made to make direct contact with the child; and

(iv) All diagnostic and psychological tests administered, if any.

(D) A summary of the developmental history of the child as required by this rule.

(E) A summary of the evaluation conducted by the expert on the child, 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 child's mental or developmental status.

(F) A detailed analysis of the competence of the child to stand trial under section 709, including the child'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 child's mental or developmental status is related to any deficits in abilities related to competency.

(H) If the child has significant deficits in abilities related to competency, an opinion with explanation as to whether treatment is needed to restore or attain competency, the nature of that treatment, its availability, and whether restoration is likely to be accomplished within the statutory time limit.

(I) A recommendation, as appropriate, for a placement or type of placement, services, and treatment that would be most appropriate for the child to attain or restore competence. The recommendation must be guided by the principle of section 709 that services must be provided in the least restrictive environment consistent with public safety.

(J) If the expert is of the opinion that a referral to a psychiatrist is appropriate, the expert must inform the court of this opinion and recommend that a psychiatrist examine the child.

(2) Statements made to the appointed expert during the child's competency evaluation and statements made by the child to mental health professionals during the remediation proceedings, and any fruits of these statements, must not be used in any other hearing against the child 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.).~~

SPRING 19-23

Juvenile Law: Competency (Amend Cal. Rules of Court, rule 5.645; renumber rule 5.645(a)–(c) as rule 5.643)

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

	Commenter	Position	Comment	Committees Response
1.	Commissioner Robert Leventer Superior Court of Los Angeles County	NI	This submission comments on two proposed rules: 1) Rule 5.645(b)(E) regarding the necessary qualifications of appointed competency experts; and 2) Rules 5.645(g)(I) and (J) which delineate what must be contained in an expert's written evaluation of a minor's competency. The following discussion analyzes both substantive issues in connection with the posed rules, as well as those relating to the potential economic burden posed by their implementation. Rule 5.645(b)(E). [Expert Qualifications] Possess a comprehensive understanding of effective interventions, as well as treatment, training, and programs for the attainment of competency available to children and adolescents. To the extent this rule requires an expert to have specific training as to evidence-based juvenile remediation this rule sets the bar too high. Restoration of incompetency for juveniles is a relatively new field and is not taught in professional schools. There is only one evidence based juvenile remediation program in California (Santa Clara) and only a few in the country. Information about remediation services is not readily available, in part because so few	The committees appreciate this comment and have modified this provision to track the statutory requirement that the expert "be familiar with" effective interventions, as well as treatment, training, and programs for the attainment of competency available to children and adolescents.

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

			programs exist. Requiring experts to have comprehensive knowledge of this subject should not be required. Given the education and training available in this area, the current statutory language is sufficient. Section 709(b)(2) provides: "The expert. . .. shall be familiar with competency remediation for the condition or conditions affecting competence in the particular case." However, the committee might want to add that the expert be familiar with their county's remediation services. Rule 5.645(g)(I) [Written Report] 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.; A competency evaluation is a functional evaluation. It is not a comprehensive diagnostic assessment. A functional competency evaluation	See response above. The committees declined to make the suggested change because the committees did not want to limit familiarity with remediation services to those services within the child's county. The committees view the treatment that could result as the result of a competency evaluation broadly, and not limited to education about the

			will not determine whether a minor needs "treatment". Moreover, a court does not have the authority to order any "treatment", other than remediation, prior to assuming jurisdiction, i.e., when and if proceedings are reinstated. The court is only authorized to offer remediation services which consist of structured, specialized education about the court process. Again, treatment beyond remediation is not permissible in the context of a competency proceeding. Counsel may explore the need for other forms of treatment, but that should not be in the responsibility of the court appointed competency expert. Rule 5.645(g)(J) [Written Report] 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	court process. AB 1214 added a requirement that upon a finding of incompetency, the court must refer the minor to services to attain competency. It authorizes courts to refer the minor to treatment services to assist in remediation that may include mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills.

			recommend that a psychiatrist examine the minor. A functional competency evaluation should not include an assessment of a minor's need for psychotropic medication. That goes far beyond a competency evaluation. Counsel and the court may want to explore issues and treatment unrelated to competency that might benefit a minor, but such an analysis falls far outside the purview of a competency evaluation. Also, there is no evidence-based rationale for the use of psychotropic medication to address incompetency remediation in juveniles. Cost: Los Angeles Juvenile Court has a select panel of competency experts who are appointed in rotation. The court orders about 175 competency evaluations per year. The cost of each evaluation is $850. This amount does not approach fair compensation for the experts. The cost of having a comprehensive assessment included with all competency evaluations, as contemplated by these rules, would at minimum double the cost to the court.	The committees have modified the proposal to delete the provision regarding psychotropic medication. The committees retained the proposed language requiring that if the expert is of the opinion that a referral to a psychiatrist is appropriate, the expert must inform the court of that opinion and recommend that a psychiatrist examine the minor. The committees are aware that the new legislative mandates regarding evaluators will likely increase costs to the courts and counties, with no additional funding made available, and will note this in the report to the Judicial Council.
2.	Orange County Bar Association By: Deirdre Kelly	AM	*Does the proposal appropriately address the stated purpose?*	

			In part. The amendments to rule 5.645(e) go beyond the statutory requirements and invite counsel to commit ethical breaches. Welfare and Institutions Code section 709(b)(3), requires evaluators to "consult with minor's counsel." The amendments to rule 5.645(e), which implement this requirement, provide evaluators with specific direction, not included in the statutory language. The proposed rule would require experts to ask "if minor's counsel raised the question of competency, why minor's counsel doubts that the minor is competent" … "[w]hat has the minor's counsel observed regarding the minor's behavior" … and "[a] description of how the minor interacts with minor's counsel." Issues of attorney-client privilege notwithstanding, Business and Professions Code section 6068, subdivision (e), requires an attorney to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client." Although the term "secrets" is not defined, the State Bar has authoritatively cited the broad definition contained in ABA Code of Professional Responsibility, which defines a secret as "information gained in the professional	The committees concluded that since minor's counsel often has the most information about the minor and that evaluators routinely do not consult with minor's counsel, it was important to include these minimal, basic questions all evaluators should be asking. The committees made great efforts in the language of the rule to protect the attorney-client privilege.

			relationships…the disclosure [of] which [would] be embarrassing and would be likely to be detrimental to the client…." (Cal. Formal Opinion 1986-87, citing the ABA Code of Prof. Responsibility, DR 4-101.) The statute has been construed broadly and includes the entire client file, even that information which has been made public. (*In the Matter of Johnson* (Review Department 2000) 4 Cal. State Bar Ct. Rptr. 179; see also *In re Jordan* (1972) 7 Cal.3d 930, 940-94 ["the protection of confidences and secrets is not a rule of mere professional conduct, but instead involves public policies of paramount importance which are reflected in numerous statutes"].) Similarly, rule 1.6 of the Rules of Professional Conduct demands an attorney "shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(l) without the informed consent of the client unless the client gives informed consent." While an attorney may be at liberty to share some of this information with the expert that will often not be the case. And while we realize the rule requires the evaluator to ask—and not the attorney to answer—in many situations attorneys might feel compelled to share this information by virture of the proposed language or, worse yet, may not know they are violating	

			their ethical obligations by sharing this information. We feel it is best to use the language of the statue and simply require evaluators to consult with counsel, so that the attorney can determine what information they may ethically share with the evaluator. *Should rule 5.645(g)(1)(C)(i) be more specific regading the records reviewed by the evaluator? Should the rule list out the sources listed in section 709(b)(3)?* Yes. Section 709(b)(3) reads, "the expert shall personally interview the minor and review all of the available records provided, including but not limited to, medical education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available." However, rule 5.645(g)(1)(C), only requires an evaluator to list the sources of information considered. While rule 5.645(f) [requiring documentation of a developmental history] can only be satisified with a review of these specific records, it would be a helpful reminder that review of these records is required by listing them in the Rule of Court. *Should rules 5.643 and 5.645 use the term "child" or "minor?"*	The committees prefer to add a cross reference to section 709(b)(3) rather than list out the sources in listed in that section.

			We express no opinion on this point.	No response required.
3.	Pacific Juvenile Defender Center By: Sue Burrell San Francisco, CA	NI	**Does the proposal appropriately address the stated purpose?** Yes. **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)?** No. We are concerned about requiring uniform lists of records. Each case is different, and what is useful in one case might not be useful in another. Our specific suggestions are contained in the comments. **Should rules 5.643 and 5.645 use the term "child" or "minor"?** We have struggled with this terminology in our own work, and agree with the analysis of the problem. Herein, we suggest two alternatives. First, the term "youth" can be used either by itself or in combination with "child." It reflects the fact that our young people are not yet adults, but are older than children. Young people perceive the term "youth" as respectful. Also, it is preferable to the term "minor," which is defined as "lesser in importance, seriousness, or significance" - not at all what we should be conveying about young people. A number of statutes have used the term "youth," for example, Welfare and Institutions Code sections 224.73, 625.6, 992, 1177, 1788, 1900, 2011, 2023, 13754; some statutes use a combination of "child", "youth," and "minor."	No response required. The committees prefer to add a cross reference to section 709(b)(3) to define the sources the expert must consider. The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by the comment. However, the committees declined to make this change, as this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term.

			Also, the term "person" may be useful in some situations. For example, "minor" is sometimes used to connote that the person is less that the age of majority, but this becomes confusing in situations where the person has reached the age of majority but is still treated as a juvenile under our laws. Person is a good option in those situations. (See, for example, Welf. & Inst. Code, § 208.5.) **Comments by Section** Please note that, to avoid confusion, we accepted the proposed changes, so the underlined text and strikeout text reflects our suggestions.* **Rule 5.643** **Comments:** We have added "youth" throughout this rule, and "person" or "young person" in places. We kept "child," as well, because this particular rule includes dependents under Welfare and Institutions Code section 300, who are often very young.	Please see Attachment A to this comment chart which contains the commentator's suggested amendments to the rule text. The substantive reasons for those suggestions are listed in the comment column of this chart and the committees' responses are listed in this column. The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by the comment. However, the committees declined to make this change, as this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term. The committees agree with this suggestion and have modified the proposal to use the phrase "has

			Also, we suggest rewording the description of disabilities. The preferred usage is to say that the person "has a disability" instead of referring to them as "developmentally disabled," thus reflecting that the person is more than their disability. (The Centers for Disease Control and disability groups have provided helpful advice on this: https://www.cdc.gov/ncbddd/disabilityandhealth/pdf/disabilityposter_photos.pdf; https://www.reachcils.org/resources/disability/disability-rights/guidelines-writing-and-referring-people-disabilities; and https://adata.org/factsheet/ADANN-writing.) If we can begin to change the outmoded language sprinkled through the rules and the Codes, it would be good. Also, we suggest removing the word "doubt" from rule 5.643. Welfare and Institutions Code section 705 refers to "when the court is in doubt," but the way the rule is phrased ("Doubt concerning…"), it sounds too much like what happens in competency proceedings, and may cause confusion. **Rule 5.645** **Comments:** Since this rule will apply to persons who are at least 12 years of age, we suggest replacing the terms "child" and "minor" with the term "youth."	a developmental disability" instead of "intellectually disabled." The committee also replaced "intellectual disability" with "developmental disability" in response to this comment and to track the statutory language. The committees prefer to retain the phrase "Doubt concerning the mental health of a minor" as that is the language in Welfare and Institutions Code sections 357 & 705. The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by the comment. However, the committees declined to make this change, as

				this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term. No response required.
			Proposed subdivision (a)(1) – we agree with enunciating the competency standard and simply referring to section 709. **Proposed subdivision (a)(2)** – we agree with adding the language "unless the parties have stipulated to a finding of incompetency…", as that is in the new amendments to section 709. We agree with adding "mental illness" to the specific conditions affecting competence, since that is in the statute, and with rewording the last clause to reference the statutory standard for incompetency. **Proposed subdivision (b)** - We are agree with the decision not to require "additional qualified experts" to meet the requirements of the rule. Those experts might have helpful testimony as consultants or witnesses even though they do not meet the requirements for the court appointed evaluator. We agree with the decision to require psychologists of all kinds, including school psychologists, to be licensed. **Proposed subdivision (b)(1)(E)** - We suggest including language to call for experts who are knowledgeable about the particular conditions suspected in the case. Not sure if our language is quite right, but if, for example, we think the	No response required. No response required. The committees declined to add a requirement that the expert be knowledgeable about the particular conditions suspected in the case. The rule already sets a high bar for expert qualifications. Further, the parties will likely not know the condition until the evaluation is completed.

			youth has a developmental disability, we would want to be sure that the expert evaluator knows about that disability. **Proposed subdivision (b)(1)(F)** – We agree with the Committee's decision about allowing certified interpreters other than Judicial Council certified, but think the rule should specify by whom they may be certified. As we understand it, California does not offer a medical certification, but people can get national certifications from National Board of Certification for Medical Interpreters, www.certifiedmedicalinterpreters.org and Certification Commission for Healthcare Interpreters, www.healthcareinterpretercertification.org. We do not have the expertise to give failproof advice, but have suggested language that could be vetted with experts in the AOC interpreter certification program. **Proposed subdivision (b)(1)(G)** – We like the idea of the evaluator providing the court and other parties with information about available remediation services whenever possible. There has been an unfortunate belief in some places that remediation consists solely of curriculum driven workbooks, but the universe of remediation is much broader, and the evaluator may be helpful in providing ideas for the remediation plan. **Proposed subdivision (c)** – We are opposed to allowing evaluator interviews that are not face-to-face. In our experience, youth are not comfortable in Skype, videoconference or other	The committees declined to specify who must certify the interpreters. There are numerous, varied interpreter certification programs and institutions. The committee prefers to not list them all out because it could miss listing several existing programs and would not include any programs that arise in the future. Further, it would limit judicial discretion to determine if an interpreter is adequately certified. No response required. The committees agree with this suggestion and have modified the proposed rule to remove the paragraph allowing the interview to be conducted remotely. The committees' original intent was that this could decrease custodial time for youth who lived in more remote areas. The committees

			remote communication systems, and this is sure to skew evaluation results. Doing interviews through remote communication devices interferes with the evaluator's ability to build trust with the young person, makes it much more difficult to administer testing, and impairs the evaluator in evaluating body language and affect. Also, from our experience in attorney interviews, we know that it is impossible to control for what is going on outside of camera range, such as eavesdropping staff or other environmental issues that may affect testing. These concerns are recognized as potential pitfalls of remote "telepsychology" by the American Psychological Association *Guidelines for the Practice of Telepsychology*, https://www.apa.org/practice/guidelines/telepsychology. One of the APA training modules specifically states that "[t]elepsychology may not be a good fit for some individuals, some diagnoses or some age groups, such as very young children…" and also points out that the integrity of testing may be at risk because "[m]ost test instruments and assessment approaches were designed for in-person use ." (Rebecca A. Clay, *How to make the most of telepsychology and steer clear of pitfalls*, 48 Monitor on Psychology 30 (May 2017).) In cases involving issues as serious as competency, we believe the state needs to provide the resources for face-to-face communications with evaluators. **Proposed subdivision (d)(1)** – In response to the question posed about whether to list out all	concluded, however, that youth are not comfortable in remote communication systems and this could skew results. There also would be much of the youth's demeanor and behaviors that the evaluator would not be able to observe. It is also not possible to control what is going on outside of camera range, such as eavesdropping staff or other environmental issues that may affect testing. The committees concluded that until the medical or psychological professions establish guidelines in this area, it was not appropriate to provide for it in the rule. No response required.

			the types of records set forth in section 709, we think the proposed language is adequate in simply referring to the statute. **Proposed subdivision (d)(2) –** We do not think the decision of what records should be provided and who should provide them should be left to individual counties. Section 709 already calls for the expert to review records provided by counsel or "other information" regarding lack of competency from any other person. It seems best to leave things as described in the statute. We have heard of some experts giving lawyers checklists of records, but the statute already sets forth the types of records to consider, and we believe it is up to counsel to determine what is relevant and to provide such records to the experts. **Proposed subdivision (e)(1)** – We do not think the rule should prescribe what the evaluator asks the young person's counsel. The evaluator should simply consult with counsel as required by the statute. We realize that the attorney has put competency into question, but have concerns that, given that this is the court's evaluator, the proposed language skirts too closely to interference with the confidential attorney client relationship. The attorney should be able to determine what to disclose. **Proposed subdivision(f)** – We have suggested substantial changes and additions to the elements of the developmental history to focus more on the purpose of the developmental history in the context of competency. We used	The committees prefer to allow each county to determine its own process and retained the proposed provision in rule 5.645 requiring that the written protocol mandated 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. This gives each county discretion to determine the process that will work best. The committees concluded that since minor's counsel often has the most information about the minor and that evaluators routinely do not consult with minor's counsel, it was important to include these minimal, basic questions all evaluators should be asking. The committees made great efforts in the language of the rule to protect the attorney-client privilege. The committee concluded that it would be preferable to keep the proposed provisions regarding developmental history as the suggested changes are overly broad for a rule of court. The proposed amendment to the rule was developed with the assistance of Dr. Grisso, a national expert on juvenile competency evaluations. Further, the suggested language would be important substantive changes to the proposal and would

			as a guide the writings of Thomas Grisso, a national expert on juvenile competence evaluation. If these are too detailed, they may at least serve as a guide for the categories of information that may be relevant for the developmental history. **Proposed subdivision (g)(1)(C)(ii) and (iii)** – Because we think what is considered should be determined by defense counsel, and that the evaluator should not be tasked with obtaining the materials, we took this out. Similarly, we took out (g)(1)(C)(iii) to conform with the earlier suggested changes on face-to-face interviews. The suggested text already covers what the evaluator should do if the youth refuses an interview. **Proposed subdivision (g)(1)(H)** – We object to including a provision on malingering in the rule. It is not mentioned in the statute, and we are concerned that it will create a straw man for a situation that seldom occurs in juvenile cases. Also, in our experience, malingering has occasionally been alleged in cases where the remediation services were utterly inadequate, but the blame was placed on the youth for not becoming competent. Most of the standardized tests used by evaluators have built in safeguards to capture malingering, and we believe those are sufficient to address the issue. **Proposed subdivision (g)(1)(I) and (K)** – we suggest using the term "attainment" for juveniles, not "restoration." That is the preferred term used by experts such as Thomas Grisso, who point out that restoration implies that the	need to circulate for public comment before they are considered for adoption. See responses above. The committees agree with this suggestion and have removed the proposed provision on malingering. The committees concluded that there are enough safeguards built into the standardized tests to capture malingering. The committees agree with this suggestion and have added the words "attain" or "attainment" whenever the rule uses "restore" or "restoration"

			person was once competent and now will be again, while many young people have never been competent. **Proposed subdivision (g)(1) (J)** - We suggest that the rule clarify that medication administered in juvenile hall is voluntary, and that if involuntary medication appears necessary, the youth should be referred for handling under the involuntary commitment statutes. **Proposed subdivision (g)(1)(K)** – We amended the recommendations language to emphasize that placement is not the primary goal – that services and treatment are also important. And we suggest adding the language from the statute about least restrictive environment.	The committees have removed this portion of the rule regarding psychotropic medication. The committees agree with this suggestion and recommend amending the rule to state "The recommendation must be guided by the principle of section 709 that services must be provided in the least restrictive environment consistent with public safety" as recommended by the commenter.
4.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	Our Court uses minor, rather than child, in juvenile justice cases Our local protocol will have to be revised to include a process for providing reports to the evaluator	The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by a comment. However, the committees declined to make this change, as this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term. No response required.

			CRC 5.643(b)(2): delete inaccurate subdivisions from 5250 and 5260 CRC 5.645: The Committee did a good job on this rule.	The committees agree to delete the inaccurate subdivisions. No response required.
5.	Superior Court of Los Angeles County	AM	**Does the proposal appropriately address the stated purpose?** Yes, the proposal addresses the stated purpose **Should rules 5.643 and 5.645 use the term "child" or "minor"?** The rules should use the term "minor." **Would the proposal provide cost savings? If so, please quantify.** No, we do not anticipate cost savings **Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, two months would be sufficient.	No response required. The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by a comment. However, the committees declined to make this change, as this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term. The committees are aware that the new legislative mandates regarding evaluators will likely increase costs to the courts and counties, with no additional funding made available, and will note this in the report to the Judicial Council. No response required.

6.	Superior Court of Orange County, Juvenile Court and Family Law Divisions	NI	*Should rules 5.643 and 5.645 use the term "child" or "minor"?* The term "minor" should be used to be consistent with Welfare and Institutions section 709.	The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by a comment. However, the committees declined to make this change, as this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term.
			Would the proposal provide a cost savings? No, the proposal would not provide a cost savings.	The committees are aware that the new legislative mandates regarding evaluators will likely increase costs to the courts and counties, with no additional funding made available, and will note this in the report to the Judicial Council.
			What would the implementation requirements be for courts? Judges would need to be notified of the changes. A local 709 Administrative Order/Protocol may also need to be revised.	No response required.
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, two months would be sufficient time for implementation.	No response required.
			Rule 5.645 Mental health condition of minor; competency evaluations	

			For section (g)(1)(C), it is recommended that the sentence cross-reference Welfare and Institutions Code section 709(b)(3) to define the sources the expert is to consider	The committees agree to add a cross reference to section 709(b)(3) to define the sources the expert must consider.
7.	Superior Court of Riverside County By: Susan Ryan Chief Deputy – Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the updates to current Rule 5.645 to include the language "intellectual disability" or "developmental disability" and to replace "child" with the word "minor" will make the rule language more uniform. Breaking out subsections (a)-(c) to be renumbered as Rule 5.643 clarifies the expert qualifications of evaluators and the court proceedings for competency evaluations. 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)? Perhaps. Listing the sources may not be necessary, maybe the rule can just refer back to 709(b)(3). The actual evaluators are more likely to refer to the code sections when they have questions, but also referencing 709(b)(3) in the Rule could also be helpful. Should rules 5.643 and 5.645 use the term "child" or "minor"? Either is fine, but to be more consistent with language used throughout juvenile laws, rules and forms the term "minor" may be best.	No response required. The committees agree to add a cross reference to section 709(b)(3) to define the sources the expert must consider. The committees appreciate the input and have modified the proposal to retain the term "child," instead of the term "minor" as circulated, to be consistent with the other juvenile court rules and forms. The committees considered using the term "youth," as suggested by a comment. However, the committees declined to make this change, as

				this term is not defined in the rules of court and any definition of the term would be an important substantive change to the proposal and public comment should be sought before the council defines the term.
			Would the proposal provide cost savings? If so, please quantify. If the actual evaluators writing reports have more direction as to what they should review and what the reports should contain the quality of the reports should be better thus requiring less continuances. These efficiencies could also lead to minors being detained for as short a period as possible. However, it should be noted that many courts continue to struggle to find 709 evaluators that meet the requirements. Some courts may need to increase the evaluator fees paid to attract competent and qualified evaluators.	The committees are aware that the new legislative mandates regarding evaluators will likely increase costs to the courts and counties, with no additional funding made available, and will note this in the report to the Judicial Council.
			What would the implementation requirements be for courts? Courts may need to update local protocols, inform judicial officers, stakeholders and evaluator panels of the changes. Some minute codes in the case management system and referral orders may need to be modified.	No response required.
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? For our court yes. Our protocol was revised this year after AB1214 when into effect, so in large part our current protocol has already accounted for these issues.	No response required.

			How well would this proposal work in courts of different sizes? Notifications, system and order changes would likely need to occur in any size court. The proposals should work well for courts of any size. Some courts will likely continue to have difficulties in attracting qualified evaluators.	No response required.

Comment Chart Attachment A

Suggested Language:

Rule 5.643. 5.645. Mental health or condition of child or youth ~~minor~~; court procedures

(a) When the court is concerned about ~~Doubt concerning~~ the mental health of a child or youth ~~minor~~ (§§ 357, 705, 6550, 6551)

Whenever the court believes that the child or youth ~~minor~~ who is the subject of a petition filed under section 300, 601, or 602 has a mental disability or mental ~~illness is mentally disabled or may be mentally ill~~, the court may stay the proceedings and order the child or youth ~~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 or youth ~~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 or youth ~~minor~~ is not in need of intensive treatment, the child or youth ~~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 or youth ~~minor~~ is in need of intensive treatment for a mental disorder, the child or youth ~~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 or youth ~~minor~~ under sections commencing with 5350. The juvenile court may retain jurisdiction over the child or youth ~~minor~~ during proceedings under sections 5270.10 et seq. and 5350 et seq.

(B) For a child or youth ~~minor~~ subject to a petition under section 602, if the child or youth ~~minor~~ is found to be gravely disabled under sections 5300 et seq., a conservator is appointed under those sections, and the professional in charge of the child or youth's ~~minor's~~ treatment or of the treatment facility determines that proceedings under section 602 would be detrimental to the child or youth ~~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 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 or youth ~~minor~~ has an intellectual disability ~~is mentally retarded~~ 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 or youth ~~minor~~ as a person with a developmental disability ~~mentally retarded~~ to the State Department of Developmental Services for placement in a state hospital.

(2) If the professional finds that the child or youth ~~minor~~ does not have an intellectual disability ~~is not mentally retarded~~, the child or youth ~~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 or youth ~~minor~~ is subject to the jurisdiction of the appropriate court under a petition for commitment of a person with an intellectual disability ~~mentally retarded~~, or

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.

Rule 5.645. Mental health or condition of youth ~~minor~~; court procedures competency evaluations

(a) Doubt as minor's competency (§§ 601, 602, 709)

(1) If the court finds that there is substantial evidence about ~~that regarding [or: about?]~~ a youth ~~minor~~ who is the subject of a petition filed under section 601 or 602 that raises a doubt as to the young person's ~~minor's~~ competency as defined in section 709, the court must suspend the proceedings and conduct a hearing regarding the youth's competency ~~minor's competence~~. Evidence is substantial if it raises a reasonable doubt about the youth's ~~child's~~ competence to stand trial.

(2) Unless the parties have stipulated to a finding of incompetency, the court must appoint an expert ~~to examine the child~~ to evaluate the youth ~~minor~~ and determine whether the youth ~~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 youth ~~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

(1) To be appointed as an expert, an individual must be a:

(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

(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

(2) The expert, whether a licensed psychiatrist or psychologist, must:

(A) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(B) Have expertise in the cultural and social characteristics of children and adolescents;

(C) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children and adolescents;

(D) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(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, including the particular condition or conditions suspected in the case; and

(F) Be proficient in the language preferred by the youth ~~minor~~, or if that is not feasible, employ the services of an interpreter certified by the Administrative Office of the Courts, a recognized professional association, or an accredited college or university interpreter program, ~~certified interpreter and~~ use assessment tools that are linguistically and culturally appropriate for the youth ~~minor~~; and

(G) Be familiar with juvenile competency remediation services available to the youth ~~minor~~.

(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.

(c) Interview of minor

The expert must evaluate the youth ~~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 still meet with the minor ~~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 1 709(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 and include in the report a developmental history of the minor as required by section709. This history is to help explain a youth's capacity to understand the adjudication process and participate in it, explaining the clinical and/or developmental reasons for any deficits in those abilities. It ~~must be documented in the report and~~ may~~ust~~ include, but is not limited to the following:

Educational Records: A history of challenges that interfere with academic success and thus, identify possible areas of court-related weaknesses or help to confirm diagnoses. These records may contain descriptions of the youth's general learning style and/or the typical educational supports used with the youth and the efficacy of those services. Whether or not the youth has been in special education, the records may help the examiner consider the youth's daily functioning in a setting, like court, with significant verbal demands.

- Progress in school, including grade level, grades and achievement levels, testing of general intelligence, specific cognitive abilities, and/or learning abilities that help clarify the youth's developmental trajectory; records of educators or service providers indicating the young person functions at a level not commensurate with chronological age; and whether the youth is in a regular or alternative education program;
- Any history of special education, including the basis for eligibility; types of services called for in Individualized Education program (IEP); services actually provided, setting for services; date of last IEP;
- Any school suspensions or expulsions, their basis, and any alternative services provided;
- Any significant disruption in school attendance and the reasons therefore;
- Any visits to or treatment by a school psychologist and the basis;

Health and Mental Health Records: Information about physical and mental disabilities identified by providers in the past, and how they have impacted the youth, and the efficacy of any treatment.

- Medical history, including diagnoses and treatment for potentially relevant conditions;
- Early health records where potentially relevant, including evidence of in utero exposure to drugs/alcohol; history of whether the youth achieved developmental milestones such as walking, talking, and reading;
- Mental health history including diagnoses, medications, treatment by mental health professionals, or hospitalizations;
- History of head injuries or incidents of being rendered unconscious, including any diagnosis of Traumatic Brain Injury;
- Any regional center contact; determinations of eligibility; and services provided;
- History of substance use and any treatment or intervention;

Child Welfare Records/Family History that may identify potentially relevant neglect or trauma, the history and general functioning of the family and/or specific struggles the family has faced.

- History of contacts with the child welfare system; any 300 petitions filed or sustained; placements; history of any services provided to the youth;
- Family history, including current living conditions; history of moving, and other disruptions due to death, incarceration, incapacitation of parent or guardians;
- History of trauma or domestic violence in the home; other trauma history such as exposure to community violence or witnessing violence to loved ones;
- History of migration or immigration from other countries; any relevant cultural or linguistic background of the youth and family.

Legal Records that describe the youth's past record of arrests or contacts with the system that might help explain strengths and weaknesses in the youth's understanding of the legal process.

- History of involvement in juvenile justice system, including sustained petitions, dispositions, interventions and services provided.
-

~~(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 2 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 face30 to face and a detailed account of any accommodations made to make direct contact with the minor; and~~

(ii~~i~~iv~~v~~) 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 and to ~~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 attainment ~~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 enable the youth to attain ~~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. Involuntary medication may not be administered pursuant to section 709, and may only be administered in conformity with Welfare and Institutions Code 705 or Penal Code Section 4011.6 (for non-wards), or Welfare and Institutions Code section 6550 if they are wards. 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 or that the minor be referred for civil commitment proceedings pursuant to the above referenced sections; and

(K) A recommendation, as appropriate, for the type of placement, services, ~~or or type of placement and~~ treatment that would be most appropriate for restoring the minor to competency. The recommendation shall be guided by the principle of Section 709 that services shall be provided in the least restrictive environment consistent with public safety.

(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.

We very much appreciate the opportunity to help with the development of this rule Please let us know if we can provide further explanations about any of the comments or suggestions in this document.

Sincerely yours,

Sue Burrell, Policy and Training Director
Pacific Juvenile Defender Center
Mill Valley, California 94941
(415) 389-9027 (Home Office)
1sueburrell@gmail.com

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Juvenile Law: Transfer of Jurisdiction to Criminal Court

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.766, 5.768, and 5.770; revise forms JV-060-INFO and JV-710

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 7, 2019

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

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 recommends that the Judicial Council amend three rules of court and one form pertaining to the transfer-of-jurisdiction process and an informational form to reflect the new provisions.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rules 5.766, 5.768, and 5.770 to implement statutory and recent case law changes pertaining to the transfer-of-jurisdiction process;

2. Revise *Juvenile Justice Court: Information for Parents* (form JV-060-INFO) to reflect modified age limits on transferring jurisdiction to criminal court over juvenile offenders; and

3. Revise *Order to Transfer Juvenile to Criminal Court Jurisdiction* (form JV-710) to reflect recent changes in the transfer statute and case law.

The text of the amended rules and the revised forms are attached at pages 6–17.

Relevant Previous Council Action

The Judicial Council adopted California Rules of Court,[1] rules 5.766, 5.768, and 5.770 effective January 1, 1991, as rules 1480, 1481, 1482, and 1483 respectively, and they were renumbered effective January 1, 2007. These rules have been amended numerous times, most recently effective May 22, 2017, to implement the changes enacted by Proposition 57.

Juvenile Fitness Hearing Order (Welfare and Institutions Code, § 707) (form JV-710) was adopted by the council effective January 1, 2006, and made optional effective January 1, 2012. It was significantly revised effective May 22, 2017, to implement the changes enacted by Prop. 57. *Juvenile Justice Court: Information for Parents* (form JV-060-INFO) was significantly revised effective January 1, 2019, to bring it up to date (using plain language), and to reformat it to make printing easier.

Analysis/Rationale

On November 8, 2016, the people of the State of California enacted Prop. 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),[2] which had provided that certain serious and 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.

Senate Bill 1391 (see Link A) further amended these provisions to limit the transfer of cases involving offenders who were 14 or 15 years old at the time of the alleged offense to those in

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

[2] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise specified.

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 in at least 10 counties have lodged challenges to the constitutionality of the law. Trial courts have ruled both for and against upholding the constitutionality of the statute and, thus, its status is in question. However, the Court of Appeal has ruled, in two cases in different appellate districts, that SB 1391 is not an unconstitutional modification of the voters' intent in enacting Prop. 57. The Supreme Court has denied review in both cases.[3]

To implement the new jurisdictional changes, the transfer rules and form 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 state 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. The proposal would also update rule 5.770 to include the requirement that the court make specific findings for each of the transfer criteria in section 707(a)(3) as provided in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009. Finally, the committee recommends revising rule 5.776 to correct a typographical error in the most recent version approved by the council.

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 3 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.

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* (form JV-060-INFO) would be revised to reflect the limitations on transfer of people 14 and 15 years of age.

[3] *People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994, review denied June 26, 2019, S255985; and *People v. Superior Court of Sacramento County (K.L. and R.Z.)*, (2019) 36 Cal.App.5th 529, review denied July 17, 2019, S256637.

Policy implications

The change to the law made by SB 1391 will result in fewer cases being eligible to transfer to criminal court jurisdiction. As a result, juvenile courts will have to determine appropriate dispositions for offenders who have been found to have committed serious offenses, including homicide, between ages 14 and 16. This proposal seeks to provide accurate rules and forms for the courts to use to carry out their transfer obligations, given the new law, and to ensure that the information form for parents reflects the current state of the law.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Six organizations submitted comments on this proposal. Three commenters agreed with the proposal. Three organizations agreed if the proposal was modified. A chart with the full text of the comments received and the committee's responses is attached at pages 18–30.

Implementing C.S. v. Superior Court (2018) 29 Cal.App.5th 1009

The committee asked for specific comment on whether the proposal should include rule or form changes to assist the courts in implementing the holding in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009, which requires the court to articulate its findings on each of the transfer criteria in the statute. The committee asked whether rule 5.770 or form JV-710 should be changed to reflect this holding. The commenters expressed an array of opinions on this question, from making no change to changing both the rule and the form. The committee concluded that it was critical for courts to be prompted to make the detailed and specific findings required for each statutory criterion, but also agreed with a number of commenters that form JV-170 was not the optimal place to record such findings. Thus, the committee recommends adding language requiring such findings to rule 5.770, and revising the text of item 4 of form JV-710 to clearly state that the court has considered and made findings on the record for each of the criteria.

Referring to the subject of a transfer order—minor v. child

The committee in recent rules and forms cycles has been confronted with what is the best term to use to refer to the young people subject to the jurisdiction of the juvenile justice courts. The last time the transfer rules and forms were amended or revised to implement Prop. 57, the committee opted to stick with its general practice of using the term "child" as opposed to the term "minor"—which is used in the statute. In this comment cycle, two commenters objected to the use of the term child with one suggesting "youth" as a substitute and one suggesting "minor" or "youth." While there was significant division within the committee on this issue, the majority favored maintaining the status quo and retaining the use of child because it is defined in both statute and rule of court, and because it signals the developmental differences that impact those who are subject to transfer motions and that the Legislature has directed the courts to take into account.

Adding an item to form JV-710 for withdrawal of a transfer motion

One commenter suggested that form JV-710 be revised to allow for the withdrawal of a transfer order to accommodate cases impacted by SB 1391's restrictions on the age for transfers. The

committee ultimately determined that this was not a necessary addition to the form because it did not fit within the transfer order process and because such motions can easily be made currently without this form.

In addition to these substantive comments, the committee received numerous clarifying and technical suggestions, most of which it adopted.

Alternatives considered

As described in the discussion of the comments, the committee discussed a number of alternative approaches to this proposal, including modifying form JV-710 to allow for courts to record their findings on the section 707(a)(3) criteria, modifying the form to place a check box for a transfer motion to be withdrawn, and changing the terminology on the form to use the term minor or youth in place of child. For the reasons set forth above, the committee opted not to adopt those alternatives.

In addition, given the legal challenges to the underlying legislation that the proposal seeks to implement, the committee considered deferring action until all appellate review is final, but determined that it would be preferable to move forward at the same time as the litigation in order to assist courts with implementation in a timely manner. Given that two courts have published opinions upholding the statute and the Supreme court has denied petitions for review in both of those cases, the committee has concluded that the statute should be implemented now.

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 form 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.

Attachments and Links

1. Cal. Rules of Court, rules 5.766, 5.768, and 5.770, at pages 6–7
2. Forms JV-060-INFO and JV-710, at pages 8–17
3. Chart of comments, at pages 18–30
4. Link A: Sen. Bill 1391 (Stats. 2018, ch. 1012), *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 are 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)–(c) * * *

(d) Time of transfer hearing—rules 5.774, 5.776

The transfer of jurisdiction hearing must be held and the court must rule on ~~the~~ the request to transfer jurisdiction before the jurisdiction hearing begins. Absent a continuance under rule 5.776 or the child's waiver of the statutory time period to commence the jurisdiction hearing, the jurisdiction hearing must begin within the time limits under rule 5.774.

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 of age 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. The court must document on the record the basis for its decision, detailing how it weighed the evidence and identifying the specific facts that persuaded the court to reach its decision, notwithstanding that the decision must be based on the totality of the circumstances and the child need not be found amenable on each of the five criteria in order to remain in juvenile court.

(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.

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."

JV-060-INFO Juvenile Justice Court: Information for Parents

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 16 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: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Case Name:	
ORDER 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. **AFTER CONSIDERING EACH OF THE TRANSFER OF JURISDICTION CRITERIA, THE COURT ALSO FINDS AND ORDERS:**
   The court has considered each of the criteria in section 707(a)(3) and has documented its findings on each of the criteria on the record, and based on those findings makes the following orders:
   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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association By: Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? Yes. 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? No. Prior to the most recent amendments to JV-710 (to comport with Prop. 57), the form contained the five factors the court needed consider for transfer and then asked the court to check a box next to each factor on which transfer was based. This committee recognized this was an outdated holdover from pre-Proposition 57 fitness hearings and needed to be changed to conform with the change in law. Specifically, prior to Proposition 57, a juvenile court judicial officer could declare a minor unfit for juvenile court by finding the minor unfit under a single factor. The Proposition 57 amendments to Welfare and Institutions Code section 707, subdivision (a)(2), clarified that the court must look to the totality of circumstances, not a single factor: "In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below." This committee recognized there was an inherent and irreconcilable tension between asking the court to consider the totality of circumstances on the one hand and asking the court to check a box related to an individual circumstance in support	No response required. The committee determined that the best way to ensure that the rules and forms are consistent with the C.S. case and prompt judges to create a detailed record of their findings on each criterion in 707(a)(3) would be to amend the rule to include that requirement and to reword the findings and orders section of the form order to clarify that the record must document the court's findings on each of the criteria.

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			of transfer and deleted the check-the-box approach of the prior form. C.S. v. Superior Court (2018) 29 Cal.App.5th 1009 ("C.S."), should not cause this committee to re-adopt the old approach. In C.S., the Court of Appeal made clear that to provide a sufficient record for review, a judge considering transfer must provide a "statement of reasons" which "articulates its evaluative process and shows how it weighed the evidence presented in light of the applicable standards." (Id. at p. 1029, internal citations and quotation marks omitted.) The court explained that "without a statement of reasons detailing the lower court's analytical process an appellate court cannot determine whether the trial court properly exercised its discretion." (Ibid.) Stated plainly, C.S. urged trial courts to show their work: "[W]e conclude that the juvenile court's transfer decision does not permit meaningful appellate review because the juvenile court did not clearly and explicitly articulate it's evaluative process by detailing how it weighed the evidence and by identifying[ing] the specific facts which persuaded the court to reach its decision to transfer C.S. to adult/criminal court." (Id. at p. 1035, internal citations and quotation marks omitted.) Reverting to the check-the-box approach of the prior form is the opposite of what the court in C.S. is asking of trial judges, which is to create a record of how the court reached its conclusion.	

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
2.	Pacific Juvenile Defender Center By Sue Burrell, Policy and Training Director San Francisco	AM	Does the proposal appropriately address the stated purpose? Yes. 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? Yes, but we also believe the rule should clarify that while specific findings are needed, the law has changed through Proposition 57, so that it is no longer required that a youth be amenable to juvenile court treatment (previously "fit") on each of the criteria to avoid transfer. Prior to Proposition 57, Welfare and Institutions Code section 707, subdivision (c), required that in order to overcome the presumption of unfitness, the young person had to be found fit on all five statutory criteria: A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the five criteria set forth in subparagraph (A) of paragraphs (1) to (5) inclusive, and findings therefore recited in the order as to each of those criteria that the minor is a fit and proper minor under each and every one of those criteria, in making a	No response required. The committee determined that the best way to ensure that the rules and forms are consistent with the C.S. case and prompt judges to create a detailed record of their findings on each criterion in 707(a)(3) would be to amend the rule to include that requirement and to reword the findings and orders section to clarify that the record must document the court's findings on each of the criteria.

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

	Commenter	Position	Comment	Committee Response
			finding of fitness. (Former Welf. & Inst. Code §707, subd. (c), italics added.) For youth who were presumed fit for juvenile court, transfer could occur based on "any one or a combination of the factors set forth in clause (i) of subparagraphs (A) to (E)". (Former Welf. & Inst Code, § 707, subd. (a).) Those specific statutory directives were eliminated by Proposition 57. (Prop 57, § 4.2, approved Nov. 8, 2016, Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 144.) Section 707 now provides only that the court "shall consider the criteria specified in subparagraphs (A) to (E), inclusive; shall "decide whether the minor shall be transferred to a court of criminal jurisdiction"; and "shall recite the basis for its decision in an order entered upon the minutes." (Welf. & Inst. Code, § 707 (a)(3), as amended by Prop 57, §4.2, approved Nov. 8, 2016.) Prior to Proposition 57, many youths were found "unfit" based on one or two of the five criteria. So while we agree with the proposal to include the principle in the C.S. case on having findings sufficient to facilitate appellate review, we also think it is important to clarify that C.S. does not take us back to the pre-Proposition 57 law requiring youth to be fit on all five criteria to stay in juvenile court. **Additional global comment: Consider changing "minor" to "youth" throughout.**	The committee determined that it was appropriate to continue using the standard Judicial Council

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			We are pleased at the efforts to modernize the terminology for referring to young people through use of the term "child" or "individual" to replace "minor." We suggest further changing the term to "youth" whenever possible. That would get rid of the pejorative term "minor," which the dictionary defines as meaning "lesser in importance, seriousness, or significance." "Youth" seems even more appropriate than "child" for the transfer rules since most will be 16 or 17 years of age, and the ones who are eligible for crimes alleged to have been committed at 14 or 15 years of age will be past the age for juvenile court jurisdiction. A number of statutes have used the term "youth," for example, Welfare and Institutions Code sections 224.73, 625.6, 992, 1177, 1788, 1900, 2011, 2023, 13754; some statutes use a combination of "child", "youth," and "minor." **Suggested Language** **Rule 5.766. General provisions** (a) Hearing on transfer of jurisdiction to criminal court (§ 707) A ~~child~~ youth 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~~ youth from juvenile court to a	term "child" because it has a definition in statute and rule and serves as a reminder that the juvenile justice courts are focused on persons who are developmentally different from adults. The committee declined to change the term to youth because that latter term is not defined and is too broad.

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

	Commenter	Position	Comment	Committee Response
			court of criminal jurisdiction, in one of the following circumstances: (1) The 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~~ youth 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~~ youth being considered. The report must include information relevant to the determination of whether the ~~child~~ youth 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 youth be transferred to the jurisdiction of the criminal court if the	

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

	Commenter	Position	Comment	Committee Response
			court finds: (1) The ~~child~~ youth was 16 years or older at the time of any alleged felony offense, or the 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 youth 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. <u>The court shall recite the basis for its decision, detailing how it weighed the evidence and identifying the specific facts that persuaded the court to reach its decision, notwithstanding that the decision shall be based on the totality of the circumstances and the youth need not be found amenable on each of the five criteria in order to remain in juvenile court.</u>	
3.	Superior Court of Los Angeles County	A	Request for Specific Comments Does the proposal appropriately address the stated purpose? -Yes, the proposal addresses 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? -Yes, the rule and form should be modified.	No response required. The committee determined that the best way to ensure that the rules and forms are consistent with the C.S. case and prompt judges to create a

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
				detailed record of their findings on each criterion in 707(a)(3) would be to amend the rule to include that requirement and to reword the findings and orders section to clarify that the record must document the court's findings on each of the criteria.
			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. -We do not anticipate cost savings.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -None.	No response required.
			Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, four months would be sufficient.	No response required.
			How well would this proposal work in courts of different sizes? -There should be no significant difference.	No response required.
4.	Superior Court of Orange County	AM	**Order to Transfer Juvenile to Criminal Court Jurisdiction (JV-710)**	

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			▪ To remind judges that findings must be considered, and an order must be made pursuant to section 707(a)(3), it is recommended that a new section #4 be added and titled, *The Court Finds*, that will provide a court finding for each individual relevant factor under 707(a)(3). This would comply with the required findings set forth in the *C.S.* case (29 Cal.App.5th 1009). The section should include the language below: Sophistication: □ **does** □ **does not** support the motion to transfer jurisdiction to the criminal court. Sufficiency of time to rehabilitate: □ **does** □ **does not** support the motion to transfer jurisdiction to the criminal court. Previous delinquent history: □ **does** □ **does not** support the motion to transfer jurisdiction to the criminal court. Previous attempts by the juvenile court to rehabilitate the minor: □ **does** □ **does not** support the motion to transfer jurisdiction to the criminal court. Gravity of the offense: □ **does** □ **does not** support the motion to transfer jurisdiction to the criminal court.	The committee determined that the best way to ensure that the rules and forms are consistent with the C.S. case and prompt judges to create a detailed record of their findings on each criterion in 707(a)(3) would be to amend the rule to include that requirement and to reword the findings and orders section to clarify that the record must document the court's findings on each of the criteria.

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			▪ The existing number #4, *The Court Also Finds and Orders* section, should be renumbered to #5. ▪ Minors who were under the adult court jurisdiction prior to section 707 being amended may be referred to juvenile court for a transfer hearing. The prosecutor or the former minor may request to have the motion withdrawn if the petitioner was under 16 years of age at the time of the violation. Due to this, it is recommended that a subsection "b" be added to *The Court Also Finds and Orders* section that reads: □ The transfer motion has been withdrawn by the □ **petitioner** □ **prosecutor.** The next hearing is on (*date*): at (*time*): **Rule 5.766, 5.768, and 5.770** ▪ It is recommended the word "child" be replaced with "minor" in the rules to be consistent with language used in section 707. ▪ Orange County has started referring to "minors" as "youth" since in many cases the accused youth are no longer minors. **Request for Specific Comments** Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings.	The committee determined that this form was not the appropriate place to include this motion as the form is expressly an order on a transfer motion and any withdrawal can be made in a minute order without using a Judicial Council form. The committee determined that it was appropriate to continue using the standard Judicial Council terminology of child because it has a definition in statute and rule and serves as a reminder that the juvenile justice courts are focused persons who are developmentally different from adults. The committee declined to change to youth because that term is not defined and is too broad. No response required.

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms. Procedures updates and changes to the case management system may be needed.	The committee will note these impacts in its report to the Judicial Council.
			Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, four months would be sufficient time for implementation.	No response required.
5.	Superior Court of Riverside County By: Susan Ryan Chief Deputy – Legal Services	A	Does the proposal appropriately address the stated purpose? -Yes. The updates to Rules 5.766, 5.768 and 5.770 seem to implement the changes of SB 1391. Updating the JV-060-INFO will give more accurate and updated information to parents of 14 and 15 year olds.	No response required.
			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? -Updating the JV-710 could be helpful but is not necessary. Some courts do not use the JV-710 but instead would include the findings for each criteria in the minute order for the transfer. It may be a good idea to update Rule 5.770 to state that the trial court must clearly articulate each criterion.	The committee determined that the best way to ensure that the rules and forms are consistent with the C.S. case and prompt judges to create a detailed record of their findings on each criterion in 707(a)(3) would be to amend the rule to include that requirement and to reword the findings and orders section to clarify that the record must document the court's findings on each of the criteria.

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? -No.	No response required.
			What would the implementation requirements be for courts? -Notify the judicial officers, court staff and justice partners of the forms changes and Rule changes. Some minute codes may need to be created or updated in the case management system to allow the court to clearly articulate the findings for each criteria.	The committee will note these impacts in its report to the Judicial Council.
			Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes	No response required.
			How well would this proposal work in courts of different sizes? -The same notifications and update codes would likely need to be made in all courts. The proposal should work for courts of all sizes.	No response required.
6.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	CRC 5.766(d) has an odd footnote. It says "So in original" to justify a double "the". The sentence should be fixed and the footnote deleted.	The committee has modified the proposal to correct this error in the rule of court.
			CRC 5.770(b)(1): add "of age" after "14 or 15 years"	The committee has adopted this suggestion.

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

SPRING 19-25

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)

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

	Commenter	Position	Comment	Committee Response
			CRC 5.770(c): revise to add the requirements of *C.S. v. Superior Court*, 29 Cal.App.5th 1009 (2018) JV-060-INFO: still says age 14 on page 6 when talking about adult prison; change to 16 JV-710: revise to comply with *C.S. v. Superior Court*, 29 Cal.App.5th 1009 (2018)	The committee agrees and has modified the proposal to add these requirements to the rule. The committee has made this recommended change. The committee has revised the proposal for revising form JV-710 to make clearer the required findings that the court must make on the record in transfer cases.

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

Item number: 24

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 8/21/19

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Juvenile Law: Sealing of Records

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.840; revise form JV-596-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
January 1, 2020

Date of Report
July 30, 2019

Contact
Tracy Kenny, Attorney
916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2020:

1. Amend California Rules of Court, rule 5.840, to incorporate changes to Welfare and Institutions Code section 786; and

2. Revise *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to accurately describe Welfare and Institutions code section 786.

The text of the amended rule and the revised form are attached at pages 6–8.

Relevant Previous Council Action

Rule 5.840 was adopted by the Judicial Council effective July 1, 2016, to implement the provisions of Welfare and Institutions Code section 786,[1] and amended effective September 1, 2018, to incorporate legislative changes. *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) was adopted effective July 1, 2016, to implement section 786, and subsequently revised effective September 1, 2017, and September 1, 2018, to incorporate ongoing changes in the law on sealing of records.

Analysis/Rationale

In 2014, the Legislature enacted Welfare and Institutions Code section 786 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 a 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. They further require 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.

In 2017, the Court of Appeal heard a dispute regarding a potential conflict between section 786 and Penal Code section 29820. That latter statute 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 an offender 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 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

[1] Hereinafter, all statutory references are to the Welfare and Institutions Code unless otherwise indicated.

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 circumstances under 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.

Policy implications

As described above, this proposal narrowly implements the changes made to section 786 by recent legislation. The committee opted not to implement a standard procedure to carry out one aspect of the legislative change relating to the changes in access allowed for prosecutors to comply with their *Brady* obligations; instead, the committee asked for comments on whether considering such a procedure in the future would be of value. With one exception, all the commenters recommended that the committee put in place such a procedure; thus, the committee will be proposing to the Rules and Projects Committee that this work be included on its annual agenda for 2020. Much of the increased workload from these legislative changes will come from implementation of these provisions, and the committee will work to try and mitigate those impacts in drafting a proposal to be circulated for public comment.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested that it might be too difficult for courts to implement this proposal in the four months from its proposed approval until its effective date. The committee considered the suggestion to delay implementation of the proposal for an additional two months but decided against a delay given that the underlying statutory changes have been in effect since January 1, 2019.

Comments

This proposal circulated for public comment from April 9 to June 8, 2019, as part of the regular spring comment cycle. Eight organizations submitted comments: four commenters agreed with the proposal; four organizations—including the aforementioned Joint Rules Subcommittee—agreed if the proposal was modified. A chart with the full text of the comments received and the committee's responses is attached at pages 9–25.

Date for destruction of records

Three commenters had concerns about the implementation of the new provisions in section 786(a), which require the court to destroy records for persons subject to firearms prohibitions because of their offenses on the date they reach 33 years of age. Rule 5.40 of the California Rules of Court, which states the provisions for sealing and destroying court records under section 786, was written to give courts broad discretion to set a destruction date up to the limits set in the other juvenile court records sealing statute, section 781. Section 781 provides for destruction at

age 38. Before the change concerning the firearms prohibition, section 786 provided no guidance on this issue, and thus the committee drafted a rule giving courts full discretion to make a case-by-case determination.

One commenter was concerned that implementation of the requirement to destroy cases subject to the firearms prohibition at age 33 would have the anomalous result that some less serious records would be preserved until the person reaches age 38 while these more serious offense records would be destroyed when the person reaches age 33. That commenter proposed that the committee modify the rule to require destruction at age 25 (when the juvenile court no longer has jurisdiction) or at age 33 so that this anomaly would be addressed. Two other commenters suggested that the rule of court provide that the records in the firearms cases be destroyed "no sooner than" the date the person reaches age 33 so that these records could be maintained until age 38, as is their practice with other 786 records.

Although the committee recognizes the logic of both these approaches, it determined that such a decision is a policy choice that must be made by the Legislature. The Legislature has amended section 786 on numerous occasions but has yet to set a standard destruction date for these records. As a result, the committee opted to implement the plain language of the statute narrowly and not substitute its judgment on the larger policy question of the most appropriate destruction date for records not subject to the firearms preservation statute. The committee would note that each court may mitigate the workload impact of this change by opting to select the date a person reaches age 33 as a default destruction date if the court determines that is the appropriate way to implement the discretion inherent in the rule. Alternately, courts may determine that the *Brady* implications of these records push in favor of their preservation for a longer period. Until this issue is clarified by the Legislature, the committee recommends maintaining maximum discretion.

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. As described above, the committee also considered setting a destruction date consistent with the date prescribed by section 786 for offenses involving firearms prohibitions, but it determined that such an approach was beyond its purview and required clearer legislative guidance.

Fiscal 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. Commenters noted that included in the costs for this compliance would be training, case management system changes, and changes in file storage management. The provisions allowing for courts to determine if files should be accessed for mitigating evidence will result in additional judicial workload. 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 these impacts are a result of legislative changes and are necessary to make the rule and form legally accurate.

Attachments and Links

1. Cal. Rules of Court, rule 5.840, at page 6
2. Form JV-596-INFO, at pages 7–8
3. Chart of comments, at pages 9–25
4. Attachment A: Chart of comments on proposal SPR12-20 (this proposal circulated for comment twice, and this chart from the first comment cycle is provided for background)
5. Link A: Assembly Bill 2952, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2952
6. 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 is amended, effective January 1, 2020, to read:

Rule 5.840. Dismissal of petition and sealing of records (§ 786)

(a) * * *

(b) Dismissal of petition

If the court finds that a minor subject to this rule has satisfactorily completed his or her informal or formal probation supervision, the court must order the petition dismissed. The court must not dismiss a petition if it was sustained based on the commission of an offense listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding on that offense has been dismissed or was reduced to a misdemeanor or an offense not listed in subdivision (b) of section 707. The court may also dismiss prior petitions filed or sustained against the minor if they appear to the satisfaction of the court to meet the sealing and dismissal criteria in section 786. An unfulfilled order~~,~~ or condition~~, or~~ of restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision. The court may not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.

(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 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 must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered 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 about what an employer can ask.

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
1.	Judicial Council and Trial Court Leadership By: Corey Rada, Senior Analyst Sacramento, CA	AM	The proposal is required to conform to a change of law. The proposal is required by statute or Judicial Council directive to be adopted, amended, or revised by a specific date. The JRS notes the following impact to court operations: ▪ Significant fiscal impact ▪ Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) ▪ Results in additional training, which requires the commitment of staff time and court resources. ▪ Increases court staff workload. ▪ Changes the responsibilities of the presiding judge and/or supervising judge. ▪ Impact on local or statewide justice partners. The JRS also notes that the fiscal impact, particularly for larger courts will be significant, although unmeasurable at this point. As discussed in the specific comments below, the staff training will be significant. Case management systems will have to be reprogrammed. Actual file storage will be modified. Future requests to release the otherwise sealed information will increase judicial workload. Requests for Specific Comments, SPR19-26 1. Does the proposal address the stated purpose?	No response required. The committee will note these impacts in its report to the council, but notes that they are a consequence of the legislative changes and not the proposal.

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			-Yes, the proposed modification squarely addresses, and accomplishes the stated purpose.	No response required.
			2. 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? -Yes, the committee should draft and circulate for comment a proposal in a future cycle to provide procedures for courts to comply with notice requirements. Specifically, Welfare and Institutions Code Section 786(g)(1)(I) provides, A request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record is necessary to meet the disclosure obligation, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall notify the person having the sealed record, including the person's attorney of record, that the court is considering the prosecutor's request to access the record, and the court shall provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination.	The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda.
			The notice requirement will best be accomplished by use of a standard judicial	The committee appreciates the suggested approach and will keep it in mind when

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

	Commenter	Position	Comment	Committee Response
			council form with a response or hearing date noticed. The committee should circulate such a form that would provide efficiency and consistency for juvenile courts.	developing a proposal to implement these provisions in a future cycle.
			3. Would the proposal provide cost savings? If so, please quantify. -No, the proposal would not provide cost savings. To the contrary, the proposal would have result in an increase in court labor, training, programming, changes to automated systems, printing, translation, and mailing costs, as well as increased judicial workload.	The committee takes note of these impacts and will report them with the proposal.
			4. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -Implementation of the rule modification will include significant action by the courts. For instance, the implementation will require training all juvenile clerks of the new requirements. Such training will be substantial to the extent legal considerations will be necessary (i.e., determining who will be prohibited from possession a firearm until the age of 30). Two to four hours of training should be expected for each clerk. Court processes will be significantly modified. This will include changes to case management	The committee takes note of these impacts and will report them with the proposal.

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			systems, and re-programming any automated destruction date calculations. Court staff workload will increase significantly. This will include substantial communication with law enforcement agencies, substantial notice requirements, and potentially substantial court hearings. 5. Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -For larger courts, four months is a not a reasonable amount of time to allow for implementation. To accomplish the changes in process and the training required, implementation should take approximately 6 months. 6. How well would this proposal work in courts of different sizes? -The burden on the court will vary, depending on the size of the court and juvenile department. Larger courts, with many law enforcement agencies will be tasked with significant additional workload.	The underlying statute has been in effect since January 1, 2019 so the committee has concluded that a January 1, 2020 implementation date is preferable to any further delay. The committee takes note of these impacts and will report them with the proposal.
2.	Orange County Bar Association By: Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? Yes. 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	No response required.

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

	Commenter	Position	Comment	Committee Response
			prosecutor to comply with Brady obligation? If so, what specific requirements should be included? Yes. The statute is clear on who must provide notice (the court) and to whom notice must be provided (the person with sealed record and their attorney of record). It is also clear that the court must provide the impacted party the opportunity to respond in writing or request an appearance. It is unclear on how long in advance notice must be given prior to the court's ruling, how far in advance of the ruling the party must submit a written objection, or when the party must request an appearance. A uniform approach to these issues would be preferable to leaving it up to individual superior courts to address through locals rules issued in accordance with rule 10.613.	The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda.
3.	Pacific Juvenile Defender Center By: Eileen Manning-Villar, Grants and Projects Director	AM	**Does the proposal appropriately address the stated purpose?** PJDC finds that the proposal appropriately addresses the stated purpose; however, it has specific concerns with the current language of Rule 5.840, subdivision (d), as will be explained further below. **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?**	No response required.

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

	Commenter	Position	Comment	Committee Response
			PJDC also agrees that the committee should draft and circulate for comment a proposal that provides the courts with procedures they should follow when complying with the requirements to notify an individual whose sealed records are sought for disclosure to allow a prosecutor to comply with Brady obligations. These procedures need to outline the minimum amount of due diligence the prosecutor seeking such records must undertake to locate and notify the individual, including some type of proof of service of the notice. The procedures need to also require the prosecutor to report his or her efforts to locate the individual to the court in cases where the individual cannot be located. PJDC further recommends that in addition to these notice procedures, the committee should draft and circulate for comment procedures: (1) governing the minimum amount of time (at least 30 days) for the individual to respond after he or she has been served notice; (2) allowing multiple ways for individuals to respond to the notice; and (3) requiring courts to establish procedures that increase indigent individuals' access to this process. **PJDC's Concerns With Rule 5.840, Subdivision (d)** SPR 19-26 requests, among other things, comment on the addition of language to comport with the changes set forth in recent amendments to Welfare and Institutions Code section 786, subdivision (a) which require that "[i]f a record contains a sustained petition	The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda. The committee will keep these suggestions in mind when and if that proposal is undertaken. The committee appreciates the policy arguments underlying this comment, but has concluded that those arguments are better addressed to the legislative branch which has amended section 786 numerous times but has not to date placed any guidance on the destruction dates for these records other than to ensure that they are not destroyed

	Commenter	Position	Comment	Committee Response
			rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age." This makes sense as far as this all goes as the language added to Rule 5.840(d) says essentially the same thing. At the same time, however, this proposed modification to Rule 5.840(d) raises the issue that for any record sealed under Welfare and Institutions Code section 786 that does not contain a sustained petition resulting in this firearms prohibition, the juvenile court should look to section 781(d) for setting the destruction date. (See proposed Rule 5.840(d) ["If the record does not contain a sustained petition that results in firearms prohibitions . . . the date for destruction of the records must be set . . . [f]or court records . . . no earlier than the date the subject of the order attains age 21 and no later than the time frame set forth stated in section 781(d)."] This means that the court can set a destruction date for a sealed record as late as the individual's 38th birthday. (See Welf. & Inst. Code, § 781, subd. (d) ["the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: . . . when the person who is the subject of the record reaches 38 years of age if the person was alleged or adjudicated to be a person described by Section 602 . . ."].) So potentially individuals without a Penal Code section 29820 restriction, who often have much less serious	before the firearms restrictions expire. Given the new attention to the Brady uses of these records the committee is not inclined to select a mandatory destruction date by rule of court that is shorter than what is contained in section 781 without clear guidance from the legislative branch. The committee has concluded, after significant discussion that the silence on this matter in the statute was intended to provide each trial court judicial officer with the discretion to set a destruction date on a case by case basis. The amended rule continues to preserve that discretion with the caveat that the committee has made the rule consistent with the express direction of the legislature that destruction occur at age 33 where firearms restrictions are in place.

	Commenter	Position	Comment	Committee Response
			sustained offenses in their juvenile record or in some cases none at all, could have their sealed records still in existence up to five years longer than if they had committed certain firearm offenses. Presumably, Rule 5.840(d) refers to the older sealing statute Welfare and Institutions Code section 781 because section 786 itself is largely silent on the destruction deadlines for sealed records. Besides the issue set forth above, Rule 5.840(d)'s reference to Welfare and Institutions Code section 781 is problematic because section 786 is a statute enacted to address issues seen over the years with its older counterpart. (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1038 (2013-2014 Reg. Sess.) as amended Mar. 28, 2014, pp. 6-7.) Section 786 allows the automatic sealing of records for qualified youths without Welfare and Institutions Code section 707(b) offenses on their record (Welf. & Inst. Code, § 786, subds. (a) & (d)), while section 781's more complicated procedures remain available to youth with section 707(b) offenses (See Welf. & Inst. Code, § 781, subd. (a)(1)(D)). Indeed among the stated needs for the enactment of S.B. 1038, the legislation that put the original version of Welfare and Institutions Code section 786 in place, was to streamline the process of sealing eligible juveniles' records, thereby "better ensuring that juveniles have a clear pathway to cleaning their records, when in compliance with existing statutory and probationary requirements." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1038	

	Commenter	Position	Comment	Committee Response
			(2013-2014 Reg. Sess.) as amended Mar. 28, 2014, p. 7.) In essence, S.B. 1038 was designed to give system involved youth "a second chance at a clean slate when pursuing higher education or entering the workforce," which are two highly effective ways to fight recidivism. (Ibid.) Section 786 was later amended to ensure it covered youths whose petitions were dismissed prior to adjudication or not sustained following adjudication. (See Welf. & Inst. Code, § 786, subd. (e), as amended by Stats. 2017, ch. 685, § 1.5 (A.B. 529).) The use of Welfare and Institutions Code section 781(d) as the guide for setting the destruction dates for sealed records runs counter to many of the stated purposes of the underlying legislation that resulted in the section 786. It does little to streamline the process on the juvenile court's end if it ends up keeping copies of the sealed record until the age of 38. It likewise undermines the "clean slate" intention of the law if a youth's sealed record still exists 20 or more years after he or she has left the juvenile court system. And allowing the sealed records of non-culpable individuals to potentially remain in existence five years longer than their counterparts who incurred a gun restriction is an unjust, though likely unintended, result indeed. PJDC acknowledges that Welfare and Institutions Code section 786, subdivision (g) sets forth twelve separate categories under which a sealed record may be "accessed, inspected or utilized" and thus there are	

	Commenter	Position	Comment	Committee Response
			justifications for maintaining the sealed records after they are sealed. However, most, if not all, of these will no longer be viable after the juvenile court loses jurisdiction of a minor which at the upper end is 25 years of age. (See Welf. & Inst. Code, §§ 607; 786, subd. (g)(1) & (g)(2).) Accordingly, PJDC urges Rule 5.840(d) be amended to set the maximum age for maintaining the individuals whose record was sealed according to section 786 at age 25, unless the minor has sustained an offense subjecting him or her to the firearms prohibition pursuant to Penal Code section 29820. Even if this committee finds that age 25 is for some reason too early to set as a maximum, PJDC urges to amend Rule 5.840(d) so that the maximum age for the destruction of sealed juvenile records is no greater than the 33 years set forth for those with firearms prohibitions. In any case, PJDC urges the committee to maintain the court's flexibility of the setting the date of destruction in that the Rule provides a range from a minimum age of 18 or 21 as applicable. Below are PJDC's proposed changes to Rule 5.840 in red text: 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) <u>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</u>	

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

	Commenter	Position	Comment	Committee Response
			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 date the subject attains age 25 [or 33] ~~end of the time frame set forth stated in section 781(d).~~ (2) 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 date the subject attains age 25 [or 33] ~~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.	
4.	Superior Court of Los Angeles County	A	Request for Specific Comments Does the proposal appropriately address the stated purpose? -Yes, the proposal appropriately addresses the 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	No response required.

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			prosecutor to comply with Brady obligations? If so, what specific requirements should be included? -Procedure on these notice requirements are not necessary. It would be helpful if future changes to the Welfare and Institutions Code section 786 would require the prosecutor to give notice that they have requested the records. 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. -We do not anticipate cost savings. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? -Implementation requirements include training for staff on the noticing requirement and case management system changes to develop event codes. Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes, four months would be sufficient.	Because the bulk of the other commenters have requested some sort of statewide standard for this process the committee intends to seek to include such a proposal on its next annual agenda. A future circulation will allow all interested stakeholders to provide feedback on the contents of that proposal. No response required. The committee takes note of these impacts and will report them with the proposal. No response required

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Orange County	AM	**Sealing of Records for Satisfactory Completion of Probation (JV-596-INFO)** ▪ The form references fines and fees must be paid. However, in the *Waiver of Rights – Juvenile Delinquency (JV-618)*, the committee recommended removing references to fees. ▪ For the first modified bullet on page one, it is recommended the sentence be revised to read: *If you are not allowed to have a gun <u>or firearm</u> because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.* **Request for Specific Comments** Would the proposal provide a cost savings? -No, the proposal would not provide a cost savings. What would the implementation requirements be for courts? -Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system. Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	The committee appreciates this suggestion and will delete the references to fees in this form. The committee appreciates the suggestion but has concluded that "gun" is a comprehensive and plain language term. No response required. No response required.

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			-Yes, four months would be sufficient time for implementation.	No response required.
6.	Superior Court of Riverside County By: Susan Ryan Chief Deputy – Legal Services	A	Does the proposal appropriately address the stated purpose? -Yes. Updating Rule 5.840 to state courts must maintain records until age 33 when Penal Code § 29820 allegations are sustained would effectuate changes made by AB 2952 and SB1281. Updating JV-596-INFO would make it clear to minors and parents when records sealed pursuant to WIC § 786 could be accessed. 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? -Yes. The proposal should include how notice would be given, and by whom. The proposal should also address forms or rule changes (or new creations) to address case flow. How long the court must give parties to object after notice? When should a hearing be set if an objection is received? What are the ramifications (if any) of a court order blocking the release? Would these types of orders have any impact on sealing of records and similar requests for that individual in the future? Would the proposal provide cost savings? -No.	No response required. The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda. The committee will keep these suggestions in mind when and if that proposal is undertaken. No response required.

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			What would the implementation requirements be for courts? -Notify the judicial officers, court staff and justice partners of the forms changes and Rule changes. Some minute and action codes may need to be created or updated in the case management system to allow the court to track when cases can be destroyed. Court staff would need to be trained, including records staff. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? -Yes. How well would this proposal work in courts of different sizes? -The same notifications, training and update codes would likely need to be made in all courts. The proposal should work for courts of all sizes.	The committee takes note of these impacts and will include them in the report to the council. No response required. No response required.
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	The committee should draft a proposal for a procedure to allow access pursuant to WIC 786(g)(1)(k). Our court has created a local procedure, but the procedures will vary from county to county without some statewide guidance. CRC 5.840(b): An unfulfilled order or condition of restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision.	The committee received consistent feedback from commenters that a rule would be of value and will seek to add that task to its upcoming annual agenda. The committee has adopted this proposed change.

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			CRC 5.840(d): The revision to subdivision (d) does comply with the amendment to WIC 786. Our court's policy has been to set the destruction date on the youth's 38th birthday, which is the end of the time frame stated in WIC 781(d). The amendments to WIC 786 and CRC 5.840 should have said "*no sooner than* the date upon which the person turns 33 years of age," but they say the records shall be destroyed *on the date* the person turns 33 years of age. This will require our court to separate our gun cases from other cases and sets up the odd situation that gun cases will be destroyed earlier than some less serious cases. Proposed revisions to form JV-596-INFO: 1) page 1, first section: 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) . . . 2) page 2, final sentence: You should seek legal advice if you have questions ~~of~~ about what an employer can ask ~~about you~~.	While this comment is supported by policy logic, the plain language of the statute requires destruction on the date the person attains 33 years of age and the committee is not at liberty to substitute its judgment for that of the legislature. The committee has adopted these technical and clarifying revisions to form JV-596-INFO.
8.	Superior Court of Ventura County By: Keri Griffith Court Senior Manager	A	To be consistent with CRC 5.840(d)(2), change the language in (d)(1) to give a "no earlier than" date and "no later than" date.	As explained above, while this comment is supported by policy logic, the plain language of the statute requires destruction on the date the person attains 33 years of age and the committee

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

SPRING 19-26

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.840; revise form JV-596-INFO)

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

	Commenter	Position	Comment	Committee Response
			Suggested: ....the court must order the records destroyed no earlier than the date the subject of the order attains age 33 and no later than the end of the time frame stated in section 781(d).	is not at liberty to substitute its judgment for that of the legislature.

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

Item number: 25

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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): Tracy Kenny 916-263-2838 tracy.kenny@jud.ca.gov27

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Family Law: Rule and Forms for Minor to Marry or Establish a Domestic Partnership

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.448; approve form FL-912; revise forms FL-910 and FL-915

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 7, 2019

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Gabrielle Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Gregory Tanaka, 415-865-7671
gregory.tanaka@jud.ca.gov

Executive Summary

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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the council, effective January 1, 2020:

1. Adopt California Rules of Court, rule 5.448 to set forth procedures to implement recent statutory changes concerning court approval of a request by a minor to marry or establish a domestic partnership;

2. Approve *Consent for Minor to Marry or Establish Domestic Partnership* (form FL-912) to allow a parent or legal guardian to consent to the marriage of his or her child;
3. Revise *Request of Minor to Marry or Establish Domestic Partnership* (form FL-910) and *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915) to implement recent statutory changes to the requirements to seek court approval for minors to marry or establish domestic partnerships and make them mandatory forms.

The text of the new rule and the new and revised forms are attached at pages 8–19.

Relevant Previous Council Action

The Judicial Council approved forms FL-910 (request) and FL-915 (order) as optional forms effective January 1, 2009, as required by the enactment of Family Code sections 302 through 304. They were both revised effective January 1, 2012, to make them dual-purpose forms to allow for a request and order for a minor domestic partnership or a marriage pursuant to legislation allowing minors to seek court approval to establish domestic partnerships.

Analysis/Rationale

In September 2018, the Legislature enacted SB 273, amending several Family Code sections 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 FCS 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.

To implement these changes the committee proposes adopting a new rule of court, approving one new form, and substantially revising the existing forms to incorporate the statutory changes.

Rule 5.448. Minor's request to marry or establish a domestic partnership
The new rule would set forth the procedures for the court and Family Court Services to follow including requirements for providing a copy of the FCS report to the court to the parties, the confidentiality requirement for the storage of the report, and clear guidance that the rule applies in courts in which FCS does not prepare recommendations in child custody matters as well as those that do.

***Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910)**
This form would be revised at items 1 and 2 to include an optional entry for the parties to identify their gender (male, female, or nonbinary). New item 5, "Minor's Age and Education," would be included on the form. This would allow the parties to identify whether the minor is exempt from the interview process. The two questions asked of each party that is a minor are (1) is the minor 17 years of age, and (2) has the minor achieved a high school diploma or a high school equivalency certificate. This information would help the court clerk identify early in the process if the case is one that requires an appointment with Family Court Services.

***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 by 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 and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915)**
The committee proposes numerous changes to comply with the new statutory requirements to include:

- Requesting information about the parties' gender and age for purposes of complying with the statutory reporting requirements for local registrars of marriage;
- A new item 4, "Review," 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);
- A findings section to allow the court to make the statutorily required findings relating to the minor's request;
- Additional specifically required statutory language relating to counseling.

The form would also be revised to include instructions to the parties on the next steps after the court makes the order, and to include a series of new statutorily required notices, including:

- 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:
  - 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;
  - The rights of an unemancipated minor to apply for a protective or restraining order to prevent abuse; and
  - 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 and applicants comply with the new and extensive 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.

Policy implications

Although statewide data on the exact number of petitions for permission for minors to marry or enter domestic partnerships are not available, surveys of courts suggest that the numbers are very small each year. The legislation that this proposal seeks to implement was introduced as legislation to prohibit minors from marrying under any circumstances in California, and was amended to ensure a consistent statewide practice across the courts that would subject these unusual petitions to significant review to ensure that minors seeking to marry are not subject to any coercion or abuse. This proposal seeks to provide the courts with the tools and information necessary to carry out these new responsibilities as effectively and efficiently as possible as these petitions are filed while ensuring that the parties are advised as the Legislature has directed. Because the statute requires each county to submit data to the Secretary of State concerning the domestic partnerships of minors, and the State Registrar concerning marriage certificates issued, it is anticipated that the Legislature will be monitoring this data to determine if further revisions to the statutory provisions are required.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Six organizations submitted comments on this proposal. Three commenters agreed with the proposal. Two commenters, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, agreed if the proposal were modified. One commenter did not indicate a position but provided suggested revisions to the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 20–30.

Inclusion of notices on request and order and use of mandatory forms

Two commenters suggested that the committee remove statutorily required notices from the request form and the order form and place those on a separate information form. One of these commenters additionally suggested that the request and order forms be made optional so that courts can elect to implement the new requirements in the manner that best meets their needs. The committee opted to maintain the notices on the proposed mandatory forms to ensure statutory compliance and to eliminate any confusion as to who should provide the notice because these requests are uncommon and subject to very specific requirements.

Collection of data regarding gender

The committee considered whether to revise the forms to include a query about the parties' genders. Family Code sections 297.1 and 304 only require that the court order document the ages of the parties in this type of action. The current forms already include an item for the parties to provide their ages. While SB 273 requires that the court order include information about the parties' genders, it makes that requirement conditional on the parties providing that information. Because the statute seems to contemplate that information about gender should be reported when available, the committee decided to revise the request and order forms to illustrate where information about gender would appear on the request and order, and to seek specific comment on this issue. The comments received were all supportive of including this requirement, provided that it was optional and it was explained that the court would not use that information to make its order on the request.

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 them 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 and determined 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 forms in these cases are mandatory; Family Court Services is required to make certain recommendations to the court, even if FCS does not normally do so with respect to other proceedings, such as those relating to child custody and visitation (parenting time); and FCS 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 Code sections.

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 give consent. 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. One commenter suggested that the term "legal guardian" also needed qualification and clarification, but the committee determined that legal guardians would all have the requisite authority and thus additional language would be duplicative rather than clarifying.

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 FCS should be confidential, SB 273 did not provide the same statutory protections for FCS's 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 FCS 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.

Although the committee understands that interviewing minors and specifically assessing for coercion, duress, or undue influence on the minor may currently be outside the scope of 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 statewide Family Court Services conferences, remote monthly trainings for FCS personnel, and the annual institute for new FCS personnel.

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. In addition, changes to court case management systems may be required to incorporate the new forms. 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.

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. Chart of comments, at pages 20–30
4. Link A: Senate Bill 273 (Stats. 2018, ch. 660), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB273*

Rule 5.448 of the California Rules of Court is 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 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 authority 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 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

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 *(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: _____

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) a minor? ☐ Yes ☐ No 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 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 request.

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 decide whether to grant the request.

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

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 FL-912 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 one):* ☐ 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

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 Lawyer's Information *(If parties 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 no 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, a 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 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.

Notices to Minor

Case Number:

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: *www.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 *www.courts.ca.gov/selfhelp-adr.htm*.
- Find information on the California Courts Online Self-Help Center website: *www.courts.ca.gov/selfhelp*.
- Find free and low-cost legal help (if you qualify) at *www.lawhelpcalifornia.org*.
- Find information at your local law library or public library.

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.

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. Help is available in over 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.

3 Rights of an emancipated minor

As specified in Family Code sections 7050 through 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 6930, 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 rights

(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 go 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.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Orange County By Family and Juvenile Divisions	NI	**Form FL-910:** For sections 5 and 6, it is recommended that the term "person" be replaced with "minor" to be consistent with the rest of the form. On page 2, the information provided after the signature section should be included on a separate form (i.e. create an INFO form). Creating an informational form provides parties with a better understanding of the process before the request is filed. **Form JV-915:** The information provided after the judicial officer's signature line should be incorporated in a separate (INFO form) It does provide sufficient information for the parties to understand the court's order and what to do after the court has ruled on the request. It also provides them with rights and responsibilities, hotlines to organizations that can assist them if they are in danger, and other information. **Cost Savings?** No, there will not be a cost savings. **Implementation Requirements for Courts?** Judges and staff would be informed of the changes. Updates would be needed to	The committee concluded that person was appropriate in this context and not confusing because the numbered items were included. Because these requests are few in number and the requirements for providing information in the legislation are extensive the committee concluded that it would be easiest for courts to fulfill the statutory mandate by including the information on the mandatory request form rather than creating additional forms. As explained above, the committee concluded that compliance with the informational requirements would be easier to achieve if the information is on the mandatory order form rather than a separate informational form. No response required. No response required. These impacts will be noted in the report to the council.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			procedures and the case management system. **3 Months Sufficient Time for Implementation?** Yes, 3 months would be sufficient time to implement the changes.	No response required.
2.	Judy B. Louie, Director/Family Law Facilitator, ACCESS Center at the Superior Court of California, County of San Francisco	A	Agree with inclusion of the non-binary language, as well as changing mother/father to "Parent." In general, this proposal makes the process more user friendly for the pro per with added instructions. The proposed forms provide clear instructions on how to complete. I like how the forms indicate that it's optional to provide info re: gender, but there should be information provided to litigants what's the purpose of providing their gender information.	The committee agrees that gender information should be requested consistent with the statutory directive that it be reported if available. There is an explanation on the form at item 4 on page 2 explaining that the gender information is for data collection and the committee deems it comprehensive.
3.	Superior Court of California, County of San Diego by Michael Roddy, Executive Officer	AM	**Identify Gender:** Yes. The form indicates this item is optional and thus protects the parties' right to not disclose gender identity. On the other hand, if a party voluntarily chooses to disclose gender and wishes to have that information included in the court order, the item provides this option as well. A party's gender identity can be valuable information for the Family Court Services worker and the bench officer who will be interviewing the party as part of the application process.	The committee agrees that gender information should be requested consistent with the statutory directive that it be reported if available.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			Form Addresses Stated Purpose?: Yes.	No response required.
			Cost Savings?: Yes, by saving courts the time and expense required to draft local rules and forms that would facilitate compliance with Family Code sections 297.1 and 304.	The committee will note this cost savings in its report to the council.
			Court Implementation Requirements: Informing bench, staff, and attorneys of changes, updating/adding filings in the case management system, and making changes to information provided to the public on each court's website.	The committee will note these impacts in its report to the council.
			Is 3 Month Sufficient Time for Implementation? Yes.	No response required.
			Work Well in Courts of Different Sizes?: Probably very well.	No response required.
			Add to Form FL-910, Page 2, Item 7 (underline for indication only and not for input on the form): I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, <u>which means that if I lie on the form, I am committing a crime</u>.	The committee has concluded that the penalty of perjury language is standard and sufficient in this context given the low likelihood of enforcement.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			Change on Form FL-910, Page 2, paragraph 2: Change "petition" to "request." Comment: Although the statutes do not require the notices to be given until the order granting permission is issued, courts should be prepared to disseminate the "Notices" pages of form FL-915 to parties before they file a request. You may want to review the notices before you file the ~~petition~~ request. **Change on Form FL-910, Page 2, paragraph 4:** Change "make the order" to "grant the request" (or "grant or deny the request") for clarity. The judge does not use the age and gender information in form FL-910 to decide whether to grant the request. **Add to Form FL-910, Item 5b & 5d:** Propose that the following language be added requiring a party who is 17 and has obtained a high school diploma or equivalency certificate to attach a copy of the diploma/certificate: "If "yes," attach a copy." **Revise Form FL-910, Item 5c:** Since the minor's proposed spouse or domestic partner may be an adult, it appears that 5c should be revised as follows:	The committee has made the suggested change in the wording. The committee notes that the request form directs the parties to look at the FL-915 before filing the request. The committee has made this clarifying change. The committee has made this clarifying change. This is a substantive change that would require circulation for comment in a subsequent cycle. The committee has made this clarifying change.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			"c. Is the person in 2 a minor? yes no. If "yes", is the person in 2 17 years of age? yes no"	
			Revise Form FL-910, Item 6d (Person in 1): Since the person in item 1 will always be a minor, it appears that 6d (Person in 1) should be revised as follows:	The committee has deleted the checkbox for person 1 being not a minor.
			"d I am a minor, but have no parent, parent capable of consenting, or legal guardian."	
			Add to Form FL-912, Item 3: Add "FL-912."	
			"Use a separate form FL-912 for each parent …."	The committee has made this clarifying change.
			Add to Line Above Signature Block: Suggest adding ", which means that if I lie on the form, I am committing a crime."	The committee has concluded that the penalty of perjury language is standard and sufficient in this context given the low likelihood of enforcement.
			I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, which means that if I lie on the form, I am committing a crime.	
			Revise on Form FL-912, Item 4a: Propose revising language to reflect the form may be filed by a legal guardian:	The committee has made this clarifying change.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			a. "I consent to my child's ward's intended…." **Strike from Form FL-915, Page 1, Item 3:** Delete "Your." This item is located in the "Order" portion of the form. ~~Your~~ Lawyer's Information (If ~~you~~ parties have a lawyer): **Correct Typo on Form FL-915, Page 3, Item 3:** Typo -- delete space between "name" and semicolon: File a lawsuit or be sued in your own name; **Change Code Section on Form FL-915, Page 4, Item 7, paragraph 2:** Change "6929" to "6930." A minor may consent to the matters provided in Family Code sections 6920 to 69~~29~~30, subject to certain limitations …. **Add to Form FL-915, Page 4, Item 7, paragraph 3:** Add ", diagnosis and treatment of a condition resulting from sexual assault." (See Fam. Code, § 6928 [not limited to minors 12 years of age or older].) Mental health treatment, outpatient counseling,	The committee has made this change to be consistent with this being a court order. The committee has made this clarifying change. The committee has made this change for accuracy and completeness. Because this section is quite extensive and the text makes clear that it is not comprehensive by opening with "For example" the committee has determined that it is not necessary to add the suggested content.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			emergency residential shelter service, diagnosis and treatment of a condition resulting from sexual assault **Change on Form FL-915, Page 4, Item 7, paragraph 7 (subheading):** Change "Other treatment" to "Other rights"; paragraphs (2) and (3) do not relate to treatment. **Strike and Add on Form FL-915, Page 4, Item 7, paragraph 8:** Delete "or" preceding "prevention or treatment of pregnancy"; add ", or diagnosis or treatment of an infectious, contagious, or communicable disease, a condition resulting from rape, or injuries resulting from intimate partner violence." (See Fam. Code, §§ 6926(a), 6927, 6930.) 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, or diagnosis or treatment of an infectious, contagious, or communicable disease, a condition resulting from rape, or injuries resulting from intimate partner violence. **Change on Form FL-915, Page 5, Item 11,**	The committee has made the suggested change for accuracy. As explained above the committee has determined that this list does not need to be exhaustive and thus has not added these rights of minors to the form.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			paragraph 3: Change "to" to ", go." For information about divorce and legal separation, including the procedures for filing in family court, go to to www.courts.ca.gov/selfhelp-divorce.htm.	The committee has corrected this typographical error.
			Form FL-915, Item 4b: Does not account for actions in which the minor "has no parent, parent capable of consenting, or legal guardian (see item 6d on FL-910)." While the issue is addressed in item 5b, the form as drafted indicates the court has considered a document which may not have been filed/apply.	The committee has added a check box to this item in recognition that it will not apply in all cases.
			Form FL-915, Item 5a: There is is ~~not~~ *no* evidence of force,…".	The committee has adopted this recommended change.
			What to do with this order section (Page 2 of 5): Propose that the instructions be clarified to direct the minor to obtain a certified copy once the order is **granted**. If the court orders a hearing under item 6, a certified copy of the order will not allow the minor to obtain a marriage license.	The instructions on the form are intended for when the court has granted the order and thus an order has been issued.
			General Comments: These forms should be optional. Our court has	The committee concluded that best way to ensure

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			created local forms and procedures that are working well. Our court would like to use the Notices to Minor, which is currently part of the proposed Order. These Notices should be a separate stand-alone form, rather than part of the Order, which would also allow the Notices to be provided earlier in the process.	compliance with the extensive statutory requirements, including the specific requirement that the notices be provided when the court makes it order would be to include the notices on the mandatory order form.
4.	Superior Court of California, County of Riverside by Susan Ryan, Chief Deputy, Legal Services	A	**Include an item for the parties to identify their gender?** Yes. If the identifying information is being requested on the order form it should be consistent with the identifying information provided on the request form. **Does the proposal appropriately address the stated purpose?** Yes. **Would the proposal provide cost savings?** No. The proposal modifies existing forms or adds an optional form that courts may have already created/implemented for optional use due to the effective date being months prior. The proposal will increase paper usage as the FL-910 form will expand from 1 page to 2 pages and the FL-915 form will expand from 1 page to 5 pages. **Implementation requirements be for courts?** The court would need to modify existing	The committee agrees and has preserved the optional gender item consistent with the statute. No response required. The committee will note these costs in its report to the council. The committee will note these costs in its report to the council.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			procedures to include any revisions to the forms as well as update packet forms posted for public to access. **Is 3 months sufficient time for implementation?** Yes. **Would proposal work in courts of different sizes?** The size of the court would have no impact due to the relatively few types of these filings each year.	No response required. No response required.
5.	FLEXCOM by Justin M. O'Connell, Legislation Chair at Cavassa O'Connell And California Lawyers Association by Saul Bercovitch, Director of Governmental Affairs	A	No specific comment.	No response required.
6.	Judicial Council of California, Joint Rules Subcommittee (JRS): Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee	AM	The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Results in additional training, which requires the commitment of staff time and court resources. • Increases court staff workload. • Changes the responsibilities of the presiding	The committee will note these impacts in its report to the council.

SPR19-27
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceView&ref_id=291&cat_id=9 (Adopt Cal. Rules of Court, rule 5.448; approve form FL-912, revise forms FL-910 and FL-915)

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

	Commenter	Position	Comment	Committee Response
			judge and/or supervising judge. • Impact on local or statewide justice partners. The fiscal impact, particularly for larger courts will depend upon the number of petitions filed. Suggested modification(s): Rule 5.448, subdivision (b)(2) should apply the qualifier "with legal authority to provide consent" to the "legal guardian" just as it does to the "parent." The committee discusses the need for the qualifier in the rule proposal, recognizing that not all parents or legal guardians necessarily have the authority to provide the requisite consent. The rule applies the qualifier to the parent only. Subdivision (b)(2) could read: 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 with such legal authorization. …. The above change should also be made to paragraph 6 of form FL-910 for the same reason.	The committee cannot identify a circumstance in which a legal guardian would not have legal authority to provide this consent and so is electing not to add this qualifying language.

Item number: 26

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Family Law: Changes to Continuance Rules and Forms

Rules, Forms, Standards, or Statutes Affected
Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; adopt form FL-309; approve forms FL-304-INFO, FL-308, and FL-310; revise forms FL-303 and FL-306; revoke and replace form FL-307

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
July 1, 2020

Date of Report
August 14, 2019

Contact
Gregory S. Tanaka, 415-865-7671
gregory.tanaka@jud.ca.gov
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends changes to four rules of court and three forms, and the adoption of one new rule of court and one new form; and the approval of three new forms, including an information sheet to implement new procedures for rescheduling a hearing in family court. The new procedures would (1) respond to the concerns raised by court professionals following the publication of an 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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2020:

1. Adopt rule 5.95 of the California Rules of Court, “Request to reschedule hearing”;

2. Amend rule 5.2 to include a new item 11 to provide that "reschedule the hearing" means the same as "continue the hearing" and to include a definition that both refer to "moving a hearing to another date and time";

3. Amend rule 5.94 by revoking subdivision (f), "Procedures to request continued hearing date," and changing the rule title to *Order shortening time; other filing requirements; failure to serve request for order* to reflect the change; replacing the word "continue" with "reschedule" in subdivision (e); and adding "as described in rule 5.95" at the end;

4. Amend rules 5.151 to incorporate the term "reschedule" and refer to new rule 5.95.

5. Amend rule 5.165(a) by eliminating "in writing" and adding "fax transmission," "electronic means," or "overnight carrier" as delivery options;

6. Adopt mandatory form *Order on Request to Reschedule Hearing* (form FL-309) to implement new rule 5.95;

7. Approve optional forms *How to Reschedule a Hearing in Family Court* (form FL 304-INFO), *Agreement and Order to Reschedule Hearing* (form FL-308), and *Responsive Declaration to Request to Reschedule Hearing* (form FL-310) to implement new rule 5.95;

8. Revise *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303) and *Request to Reschedule Hearing* (form FL-306) to incorporate the term "reschedule" and refer to new rule 5.95; and

9. Revoke and replace form FL-307 from *Order on Request to Continue Hearing* to *Request to Reschedule Hearing Involving Temporary Emergency (Ex Parte) Orders* to implement new rule 5.95.

The text of the amended and new rules and the new and revised forms are attached at pages 12–33.

Relevant Previous Council Action

Effective January 1, 2014, the Judicial Council revised and renumbered form FL-306/JV-251, separating it into two forms, FL-306 and JV-251, to clarify what orders are appropriate in family and juvenile law proceedings. Effective July 1, 2016, the council approved form FL-303 to help fill a need for a standard form that can be accepted for filing in family courts across the state. Also effective July 1, 2016, the council revised form FL-306, changing its title from "*Application for Order and Reissuance of Request for Order and Temporary Emergency (Ex Parte) Orders*" to "*Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders.*" The form was also revised to delete references to any filing other than a request for order and temporary emergency (ex parte) orders.

Effective September 1, 2017, the Judicial Council approved amending rule 5.94 to remove "and extend temporary emergency (ex parte) orders" from the title and reflect revised procedures relating to continuances; revised form FL-303 to provide a space for a party to specify the hearing date requested for the no-notice hearing or the date that the party will submit the request for the court to decide based on declarations; and revoked form FL-306 and replaced it with two new forms, *Request to Continue Hearing* (form FL-306) and *Order on Request to Continue Hearing* (form FL-307).

The title of new form FL-306 was changed to harmonize it with other civil forms used to request a continuance to effect service with temporary emergency (ex parte) orders. 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* (RFO) (form FL-300), order to show cause, or other moving papers without temporary emergency orders "*to allow for service on the other party before the hearing*" (emphasis added).[1]

Analysis/Rationale

The recommended rules and forms for requests to reschedule a hearing in family law, as described above, would help parties more clearly understand the procedures that apply and need to be followed.

Currently, rule 5.94(f) and forms FL-306 and 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.

Currently, no statewide rules or forms 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 process allows the

[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.

other parties the opportunity to be heard on the request to continue the hearing before the court makes an order.

In response to the above concerns, the committee recommends changes to four rules of court and three forms, and the adoption of one new rule of court and one new form; and the approval of three new forms, including an information sheet to implement new procedures for rescheduling a hearing in family court.

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 reflects the committee's recommendation 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 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 recommends extensive changes to the rescheduling procedures in rule 5.94(f). For this reason, the committee recommends striking subdivision (f) and placing the rescheduling rules under 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

Recommended new rule 5.95 organizes the requirements for rescheduling a hearing under subdivisions that highlight the reason for the request. For example, subdivisions (b) through (e) would be titled as follows:

- Reschedule a hearing because the other party was not served;
- Written agreements (stipulations) to reschedule a hearing;
- Reschedule a hearing after the other party was served with the request for order or other moving papers; and
- Reschedule a hearing to attend mediation or child custody recommending counseling.

Reorganizing the rules for rescheduling a hearing under a separate rule will help the parties better understand the procedures that apply in each situation, along with the relevant forms associated with those procedures.

A significant recommended change to the rescheduling rule is reflected in rule 5.95. Under subdivision (b)(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 initial 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. 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 the request and sign the order to reschedule a hearing.

The recommended rules and forms also promote judicial efficiency by continuing to provide clear guidelines to submit a request to reschedule a hearing, allowing sufficient notice for the court to adjust courtroom calendars and prevent any unnecessary preparation and review of those case files. 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 sought comment about whether this provision should be included in recommended new rule 5.95.

Recommended rule 5.95(d) clarifies 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 requires that the party file with the request to reschedule the hearing a declaration demonstrating when and how notice and service were completed.

Further, recommended rule 5.95 specifies 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 5.169. For example, the party would have to obtain a court date describing 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 recommended amendments also prompt the parties to refer to their court's local rules and procedures when proceeding under rule 5.95(d). This prompt acknowledges that courts differ in 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 based on pleadings 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 or by telephone, ~~in writing~~, voicemail, fax transmission, electronic means (if permitted), 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 recommends 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; and
- 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 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-304-INFO)

The recommended new form would provide general information to the parties involved in a proceeding to reschedule a hearing. The form would reflect the requirements of recommended 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 recommends a new form to reschedule a hearing when the court has issued temporary emergency (ex parte) orders with a *Request for Order* (form FL-300). The form includes 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.)*

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 recommended 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 recommended optional form would help implement the new procedures specified in rule 5.95 and the information sheet. The availability of this form 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.

Policy implications

As mentioned above, the committee's proposal seeks to address a demonstrated need that exists for statewide consistency and clarity for requests to reschedule hearings in family law proceedings, and the recommendations are expected to result in a greater understanding of a complicated process by the public, particularly for self-represented litigants, and an increase in judicial efficiency for the courts.

Comments

The proposal circulated for public comment from April 10 to June 10, 2019, as part of the spring 2019 invitation-to-comment cycle to the standard mailing list for family and juvenile law proposals. Fourteen organizations and individuals, as well as the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees, provided comment: three agreed with the proposal, six agreed with modifications, one disagreed, and four did not indicate a position but provided comments. Generally, all but one commenter agreed that the proposal appropriately addressed the stated purpose. Concerns raised by one commenter disagreeing with the entirety of the proposal, are addressed in the Alternatives Considered section below. Several comments suggested straightforward changes, including simple changes to language and to correct for typographical errors. A chart with the full text of the comments received and the recommended committee responses is attached at pages 34 to 77.

Rule 5.2

One commenter suggested defining what "reschedule" and "continue" means, in addition to stating that the two terms should be used interchangeably. In response to the comment, the committee has included recommended language to rule 5.2 further clarifying that either word "refers to moving a hearing to another date and time."

Rule 5.94

One commenter suggested adding to rule 5.94(e)(2) a cross-reference to direct the reader to rule 5.95 for requests to reschedule a hearing. In response to the comment, the committee has included the recommended cross-reference to rule 5.94.

Rule 5.95

Submission of request to reschedule at least five court days before the hearing. Every commenter responding to this request for specific comment, except one, stated that the recommended rules and forms should include guidance to parties that a request to reschedule should be submitted to the court at least five court days before the hearing date. In response to the overwhelming majority of commenters, the committee recommends including language stating that parties should submit the forms to the court no later than five court days before the hearing date throughout the rules and forms in this proposal.

New "Application" section. One commenter suggested adding an application or purpose section—similar to that in rule 5.151(b)—at the beginning of rule 5.95. The committee agrees with the commenter and recommends including an "Application" section because, in addition to stating the rule's purpose, the new recommended language also clarifies that rule 5.95 does not apply to Domestic Violence Prevention Act cases.

Specific comment requested on rule 5.95(a) option 1 or option 2. The committee asked for specific comment on whether rule 5.95(a), now reordered to subdivision (b), should end with one of two options:

> 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.

As noted by one commenter, rule 5.92, which is referenced by option 2, provides no guidance for deadlines pertaining to requests to reschedule as implied by the language contained in option 2. Rule 5.92 instead applies to deadlines for the initial *Request for Order* (form FL-300), order to show cause, or other moving paper. Thus, rule 5.95(b) was revised to make clear that the deadline for service described in rule 5.92 pertains to the underlying motion and not to requests to reschedule. Accordingly, in new recommended rule 5.95(b), option 1, and not option 2, was used to end the paragraph with "…the party must ask the court to reschedule the hearing date."

Rule 5.165

One commenter suggested that "(if permitted)" be added to rule 5.165 to be consistent with the options listed on the recommended revisions to *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303). The committee has added the recommended language to the rule.

Proposed new form FL-306/FL-307/FL-308-INFO

One commenter remarked that the number of the proposed form was "unnecessarily long." The committee agreed and renumbered the INFO sheet to form FL-304-INFO. As with rule 5.95, the overwhelming majority of commenters stated that guidance to submit the forms at least five court days before the hearing should be provided in item 10 on forms FL-306 and FL-307, as well as on new form FL-304-INFO.

Form FL-309 as a mandatory form

The invitation to comment categorized *Order on Request to Reschedule Hearing* (FL-309) as a mandatory form. However, as many commenters indicated, references throughout the rules and forms to form FL-309 used permissive language such as "may be used" when describing use of the form. The committee has revised all language referring to form FL-309 throughout the proposal to clarify that it is a mandatory and not an optional form.

Implementation date

Multiple commenters from the superior courts requested a longer implementation period than three months. Because a specific date for implementation of this proposal is not mandated by law or otherwise urgent, staff recommends that the effective date be changed from January 1 to July 1, 2020, to allow more time for courts to prepare as requested. However, if subsequent legislatively mandated rules or forms in family law require an effective date of September 1, 2020, then the effective date of this proposal may be postponed until then for more efficient implementation processes by the courts.

Alternatives considered

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 opted for spring 2019 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 but did not pursue this option, because doing so 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 for form FL-306 and concurrently work with committee members to draft a proposal to circulate for comment in the spring 2019 cycle.

One commenter argued that no changes should be made to the rules and forms related to continuances in family law proceedings, or even revoking the current forms. The commenter raised concerns that the proposal would make the procedures for rescheduling a hearing a more convoluted, confusing process than it currently is, would therefor negatively impact self-represented litigants and create more workload issues for the courts. The committee considered making no changes to the current rules and forms for requests to reschedule a hearing in family law proceedings. However, based on comments received, both in the previous and current invitation-to-comment periods, the committee has recognized a demonstrated need to create a more consistent and clear process—particularly for self-represented litigants—than currently exists, by establishing uniform statewide rules and forms for all requests to reschedule a hearing in family law. As mentioned above, there are no statewide rules or forms for requests to reschedule a hearing in family law, other than under the limited circumstances outlined in rule 5.94(f) and form FL-306. Courts have reported that this has resulted in parties and attorneys attempting to improperly use current form FL-306 for all requests to reschedule a hearing in family law cases. In addition, the current statewide rules and forms offer no guidance on providing notice and serving the other party with a request to reschedule a hearing, which has also contributed to much confusion, especially for self-represented litigants, and concerns regarding due process. To minimize the burden on implementation and changes to local court business processes, the committee has also aligned the recommended procedures for requests to reschedule a court hearing with existing ex parte rules in family law. The committee expects that the recommended rules and forms contained in this proposal will ultimately lead to less confusion and more clarity for self-represented litigants, than the current process for rescheduling family law hearings, and result in a long term net increase in efficiency for judicial officers, court calendars, and court operations.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in costs incurred by the courts to revise forms and add them to their case management systems, train court staff about the new and amended rules and the new and revised forms, 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.

Attachments and Links

1. Cal. Rules of Court, rules 5.2, 5.94, 5.95, 5.151, and 5.165, at pages 12–20
2. Forms FL-303, FL-304-INFO, FL-306, FL-307, FL-308, FL-309, and FL-310, at pages 21–33
3. Chart of comments, at pages 34–77

Rule 5.95 of the California Rules of Court are adopted and rules 5.2, 5.94, 5.151, and 5.165 are amended, effective July 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 and refers to moving a hearing to another date and time.

(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, as described in rule 5.95.

~~**(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) Application

The rules in this chapter govern requests to reschedule a hearing in family law cases, unless otherwise provided by statute or rule. Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.

(b) 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 as described in rule 5.92 or as ordered by the court and the requesting party still wishes to proceed with the hearing, the party must ask the court to reschedule the hearing date.

(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); and

(ii) The party should submit the request to the court no later than five court days before the hearing set on the *Request for Order* (form FL-300), order to show cause, or other moving paper.

(B) *On the date of the hearing*

The party may 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 on Request to Reschedule Hearing* (form FL-309).

(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 any temporary emergency (ex parte) orders issued with the *Request for Order* (form FL-300).

(3) If the court reschedules the hearing:

(A) The court, on a showing of good cause, may modify or terminate any temporary emergency (ex parte) orders initially granted with the *Request for Order* (form FL-300), order to show cause, or other moving paper.

(B) The requesting party must serve the *Order on Request to Reschedule Hearing* (form FL-309) 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.

(c) Written agreements (stipulations) to reschedule a hearing

The court may reschedule the hearing date of a *Request for Order* (FL-300), order to show cause, or other moving paper 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) Any temporary emergency orders will remain in effect until after the end of the new hearing date, unless modified by the court.

(4) The parties should submit the agreement to the court no later than five days before the hearing set on the *Request for Order* (form FL-300), order to show cause, or other moving paper.

(5) The court must approve and sign the agreement to make it a court order.

(6) The court may limit the number of times that parties can agree to reschedule a hearing.

(d) 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 unable to reach an agreement about rescheduling the hearing.

(1) To reschedule a hearing, either party must submit a written request to reschedule before the hearing date 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 (i) 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* (form FL-300), order to show cause, or other moving paper.

(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 on Request to Reschedule Hearing* (form FL-309).

(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* (form FL-300), order to show cause, or other moving paper.

(e) 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 (c) of this rule; or

(B) Follow the procedures in (d) 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 or by telephone, ~~in writing~~, voicemail, fax transmission, electronic means (if permitted), 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 v9. 08142019 gst
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 TEMPORARY 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 *(select all that apply)*
   ☐ that there will be an emergency court hearing ☐ that papers will be submitted to the court 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.
      ☐ personally at *(location):* , California.
      ☐ by telephone using telephone no.:
      ☐ by fax using fax no.:
      ☐ by voicemail using 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. July 1, 2020]

DECLARATION REGARDING NOTICE AND SERVICE OF REQUEST FOR TEMPORARAY EMERGENCY (EX PARTE) ORDERS

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

☐ petitioner ☐ petitioner's attorney ☐ other parent/party ☐ other parent's/party's attorney
☐ respondent ☐ respondent's attorney ☐ child's attorney ☐ other *(specify):*

before the request was filed with the court:

(1) ☐ A copy of *Request for Order* (form FL-300) for temporary emergency orders, and *Temporary Emergency (Ex Parte) Orders* (form FL-305).

(2) ☐ A copy of a request to reschedule hearing and *Order on Request to Reschedule Hearing* (form FL-309). Form FL-306 may be used for the request.

(3) ☐ A copy of a request to reschedule hearing involving temporary emergency (ex parte) orders and *Order on Request to Reschedule Hearing* (form FL-309). Form FL-307 may be used for the request.

(4) ☐ Other documents *(specify)*:

b. **Documents were served on** *(date):* at: ☐ a.m. ☐ p.m.

☐ personally at *(location):* , California.
☐ by fax on using 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)

FL-304-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 5.151 through 5.169 for the procedures to notify and serve the other party with a request to reschedule.

You can 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 (form FL-308)

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.

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.

Remember, the agreement is not an order until it is signed by a judge.

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 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, such as form FL-306 or form FL-307, to ask for a court order.

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, but 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.
- Includes property restraint orders and you are the responding party.
- Was served but 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 an order to show cause was not served on the other party?

You should complete and file with the court a written request to reschedule the hearing and a proposed order at least five court days before the hearing, unless you have a very good reason to submit them later.

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) must be used for this purpose.

6 What if I need to reschedule the hearing for a good reason after the *Request for Order* or an order to show cause was served?

- ***Complete a written request and a proposed order.***
  You may use form FL-306 or FL-307, whichever form applies to your case, and must use *Order on Request to Reschedule Hearing* (form FL-309).
- ***Follow your court's local rules.***
  To get 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 and follow them.

  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 to Request to Reschedule Hearing* (form FL-310).
- ***Submit the written request and order to the court.***
  You should complete and file with the court a written request to reschedule the hearing and a proposed order at least five court days before the hearing, unless you have a very good reason to submit them later.

  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.***
  If for some reason, you do not receive a response to your request to reschedule from the court before the hearing, you should still attend the hearing, or the court may make a decision without you.
- ***Make an oral request on the date of the 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 v8 081419 gst
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-304-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* (form FL-300), order to show cause, or other moving paper in item 2.
   b. ☐ I am the party who is responding to the *Request for Order* (form FL-300), order to show cause, or other moving paper in item 2.
2. I ask that the court reschedule 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. ☐ On a date I am available, which does not include *(specify dates):*
   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. July 1, 2020]

REQUEST TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Cal. Rules of Court, rule 5.95
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 Request for 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* (form FL-300), order to show cause, or other moving paper, unless you have a very good reason to submit them later.

PROPOSED ORDER REQUIRED

11. I have submitted a proposed *Order on Request to Reschedule Hearing* (form FL-309).

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 v11 081419 gt
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-304-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* (form FL-300), order to show cause, or other moving paper in item 2.
   b. ☐ I am the party who is responding to the *Request for Order* (form FL-300), order to show cause, or other moving paper in item 2.
2. I ask that the court reschedule the hearing date for the *(select one)*
   a. ☐ *Request for Orde*r.
   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):*

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. ☐ On a date I am available, which does not include *(specify dates):*
   c. ☐ Other *(specify):*

Form Approved for Optional Use
Judicial Council of California
FL-307 [New. July 1, 2020]

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 available only 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 Request for 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* (form FL-300), order to show cause, or other moving paper, unless you have a very good reason to submit them later.

PROPOSED ORDER REQUIRED

11. I have submitted a proposed *Order on Request to Reschedule Hearing* (form FL-309).

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 v11 081419 gt
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.
2. The name of the party who filed the *Request for Order*, order to show cause, or other moving paper 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 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 6.
      (2) ☐ *(date):*

Date: ▶ JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
FL-308 [New July 1, 2020]

AGREEMENT AND ORDER TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Cal. Rules of Court, rule 5.95
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 v10 081419 gt
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 moving paper 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 7a(4).

   b. ☐ The court in its discretion finds good cause and reschedules the hearing.

Form Adopted for Mandatory Use
Judicial Council of California
FL-309 [New July 1, 2020]

ORDER ON REQUEST TO RESCHEDULE HEARING
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Family Code, § 245
Cal. Rules of Court, rule 5.95
www.courts.ca.gov

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 for ☐ 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

(1) ☐ as required by rule 5.92

(2) ☐ by *(date):*

on *(select all that apply)*

(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* (form FL-300), 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) may be filed and served

a. ☐ as required by rule 5.92.

b. ☐ by *(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 v10 081419 gt
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-304-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) ☐ On a date I am available, which does not include *(specify dates):*
      (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 July 1, 2020]

RESPONSIVE DECLARATION TO REQUEST TO RESCHEDULE HEARING

Family Code, § 245
Cal. Rules of Court, rule 5.95
www.courts.ca.gov

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	NI	See comments on specific provisions below.	
2.	California Lawyers Association, by the Executive Committee of the Family Law Section (FLEXCOM)	A	FLEXCOM agrees with this proposal.	No response required.
3.	Julie Camacho Court Manager Ventura Superior Court	NI	Agree with the proposed revisions, which will help to clarify the continuance process, with the following modifications: 1. FL-309 Order on Request to Rescheduled Hearing – recommend modifying Item number 9 to add an additional box stating "Documents listed in Item 10 to be served per code" - if the court delegates to the court clerk the authority to reschedule a hearing, it would be within the clerk's ministerial duties to check this box and would not require the clerk to enter dates that documents must be served by as this could appear to the public as orders beyond the clerk's authority. This would also make the process more efficient for Judicial Officers who have been writing this statement on the form each time it is presented.	The committee agrees with the commenter and recommends adding another option under item 9(b) to include the language, "as required by rule 5.92."

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			2. The same medication to Item number 11 and only require a date be entered if the court is shortening time to file a responsive declaration. See comments on specific provisions below.	The committee agrees with the commenter and recommends adding another option referencing rule 5.92 to item 11 as well.
4.	Candice Garcia-Rodrigo Superior Court of Riverside	AM	There should be a deadline to Request to Reschedule a Hearing when the other side has been served and has responded. See comments on specific provisions below.	In response to a majority of commenters, the committee recommends language in the proposed rules and forms stating that the *Request to Reschedule* should be submitted at least 5 court days before the hearing date
5.	Harriett Buhai Center for Family Law by: Rebecca L. Fischer Staff Attorney	AM	The Harriett Buhai Center for Family Law wholeheartedly supports modifying the rules and forms to address family law continuances. Does the proposal appropriately address the stated process? In general, yes. See comments on specific provisions below.	No response required.
6.	Judy Louie Director/Family Law Facilitator ACCESS Center Superior Court of San Francisco	NI	• The info sheet is very helpful. The flowchart would be good info to pass along to SRLs. • Agree with the change of the word "continuance" to the word "reschedule". SRLs understand the word "reschedule". Also nice to have ability to be scheduled for mediation	No response required. No response required.

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			before the next hearing date. • Agree that giving authority to clerks to reschedule would increase court efficiency but the purpose would only be served with adequate training re when to and not to reschedule. • Notice requirement similar to ex parte "notice form" requirements. Consistence is great, • Method of Notice including "electronic means" would not only be convenient but also serve those situations as any contact may not be best for parties. • Perhaps, information re one free reschedule as matter of course with ex parte order for property restraint. See comments on specific provisions below.	No response required. No response required. No response required. The committee considered the commenter's suggestion but has determined that the description included in item 7(c) of form FL-307 (*Request to Reschedule Hearing Involving Temporary Emergency (ex parte) Orders*) provides sufficient explanation. In addition, the committee anticipates that Self-Help Center staff will be available to provide further clarification and guidance, if needed.
7.	Orange County Bar Association By: Deirdre Kelly, President	AM	See comments on specific provisions below.	
8.	Superior Court of Los Angeles	AM	**Does the proposal appropriately address the**	

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			stated purpose? Yes, the proposal addresses the stated purpose.	No response required.
			Are other changes to the rules and forms needed for the proposal to address the stated purpose? Yes. See the proposed modifications above.	No response required.
			See comments on specific provisions below. **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.** Yes, for the litigants/counsel in reduced court hearings.	No response required.
			What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management	

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			systems. Implementation requirements will include changing existing forms and adding new forms to the Case Management System. It will also require a new procedure and the changes and additions to event codes and fees associated with these forms. Clerical staff and judicial assistants will need training. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Three months should be sufficient. **How well would this proposal work in courts of different sizes?** It should work well in courts of different sizes.	No response required. No response required. No response required.
9.	Superior Court of Orange Family Law Division	NI	Revise rule 5.95(c) and forms FL-306 and FL-307 to indicate a deadline for self-represented litigants to file a request and serve the other party. *Would the proposal provide a cost savings?* No, there will not be a cost savings.	In response to a majority of commenters, the committee recommends language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date. As already indicated in proposed rule 5.95, notice and service of a request to reschedule should be done according to existing rules 5.165-5.169. No response required.

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			What would the implementation requirements be for courts? Judges and staff would be informed of the changes. Updates to procedures and the case management system may be needed. *Would 3 months from the Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes, 3 months would be sufficient time to implement the changes.	No response required. No response required.
10.	Superior Court of Riverside by: Susan Ryan Chief Deputy of Legal Services	NI	Does the proposal address the stated purpose? Yes. Are other changes to the rules and forms needed for the proposal to address the stated purpose? No. See comments on specific provisions below. Would the proposal provide costs savings? No. What would the implementation requirements be for courts? Clerk's office and courtroom staff would need to be informed of the revised forms replacing "continuance" with "reschedule" (approximately 1 hour). Procedures would need to be modified to reflect	No response required. No response required.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			"request to reschedule". Codes would need to be created/modified in the case management system for processing the documents and hearings. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? The same updates to procedures, codes and dissemination of information would likely need to occur in any size court. The proposals should work well for courts of any size.	No response required. No response required.
11.	Superior Court of San Bernardino by: Court Executive Office	A	Does the proposal appropriately address the stated purpose? Yes Are other changes to the rules and forms needed for the proposal to address the stated purpose? Yes See comments on specific provisions below. 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	No response required.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			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. There is a significant impact. We would be required to update our procedures and develop a process that would work efficiently for all of our family law divisions. This would also require training for business office staff, resource center staff and judicial officers. In addition we would need to create codes for our case management system. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? I believe four to six months would be more manageable. How well would this proposal work in courts of different sizes? I believe courts with a smaller volume of cases would not be as impacted as larger courts, just be the sheer number of filings.	No response required. The committee has recommended postponing implementation to an effective date of July 1, 2020. No response required.
12.	Superior Court of San Diego by: Mike Roddy Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes.	No response required.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			Q: Are other changes to the rules and forms needed for the proposal to address the stated purpose? See general comments.	
			Q: Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Notifying staff, revising internal procedures, updating forms packets, and updating/adding filings in case management system.	No response required.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, at least three months but preferably longer or an effective date during July instead of January because July effective dates usually do not coincide with other statutory, rule, form, internal court changes and major holidays as much as they do during January.	The committee has recommended postponing implementation to an effective date of July 1, 2020.
			Q: How well would this proposal work in courts	

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			of different sizes? It appears that the proposal would work for courts of all sizes. See comments on specific provisions below.	No response required.
13.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), Judicial Council of California	AM	**JRS Position:** Agree with proposed changes if modified. The JRS notes the following impact to court operations: • Proposed date for implementation is not feasible or is problematic. This proposal would appear to be workable in courts of different sizes. **Suggested modification(s):** Given the potential for a number of new Rules of Court being implemented on the same timeline; it would be advisable to give trial courts more time to implement a rule change that affects due process rights in both limited civil and misdemeanor appeals. See comments on specific provisions below.	The committee has recommended postponing implementation to an effective date of July 1, 2020.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
14.	Hon. Rebecca Wightman, Commissioner Superior Court of San Francisco, Dept. 416	N	DO NOT AGREE. These comments are not on behalf of any organization, but are from a judicial officer who has spent decades in family law dealing primarily with pro per litigants. When I first read this proposal, the first question that came to mind was: How did we get to this point – where what was originally supposed to address a few limited situations (the 2017 changes) has now grown to, in my view, a convoluted and confusing set of new forms and rules, that create an even greater workload on both the clerks and the bench, in a time when staffing and resources are still limited? This newest proposal, especially with regard to the situation where an RFO has already been served, is exacerbating the problems caused by the changes made in 2017. Combined, these changes – at least with regard to the situations where an RFO has already been served – have now created a new and unnecessary parallel system for attorneys and litigants to bring requests to reschedule to an area to what was previously an established ex parte process designed primarily for emergencies (including continuances), orders shortening time, and reissuances. What appears to have started out in 2017 as a well-meaning task to try to simplify processes and address the few limited situations where a continuance was statutorily allowed for a respondent once a certain type of request was	Following the revisions to form FL-306 in 2017, many courts reported that both attorneys and self-represented litigants were attempting to use the form for all requests to reschedule, including when the other party had already been served. Currently, if a party needs to request a rescheduling of a court date for good cause, after service has been completed, and there is no agreement reached with the other party, they would generally be required to complete and file a *Request for Order* (form FL-300). For self-represented litigants, filling out a multi-purpose form, such as the FL-300, simply for a request to reschedule is a very complicated, confusing, and cumbersome process. By separating out all requests to reschedule into a separate form set, the committee believes that the new proposed rules and forms will be a much more clear and simple process than the current alternatives available, especially with regard to self-represented litigants.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			served, has unfortunately morphed into another proposal that makes it even more confusing to navigate, and raises concerns on various levels -- procedurally, operationally, ethically and due-process wise. Sometimes, when one tries to address all of the various situations that may occur, the proposed solutions get harder to navigate and cause more work for everyone. One look no farther than the chart provided at the end of the report – where the "B" category (p.3 of 4 of chart) is difficult for me – trained in the law – to follow, let alone a pro per. The more rules and forms produced in this area, the more confusing it gets. Until the unfortunate change in 2017, the Ex Parte rules were intended for situations that occurred on a temporary emergency basis. Now, however, and with the proposed changes, essentially all manner of requests to continue for RFOs already served are pushed into a one-day notice time frame. I strongly urge that consideration be given to starting over, and only addressing the following situations when it comes to continuances (i.e. adhere to the process that existed even before the changes to the ex parte process started in 2017 but add the limited situation of any statutorily required continuance): (1) where RFO not served, (2) where parties agree to a continuance, (3) where a statutory right to a continuance is allowed, and (4) where there are	Based on the majority of comments received, both in previous years and the current comment period, the committee has recognized that there is a demonstrated need to have statewide uniform rules and forms to cover all requests to reschedule a hearing to address the various types of requests to reschedule that inevitably arise every day in the courtroom and at the clerks office.

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			exigent, i.e. emergency circumstances. Once an RFO has been served and the hearing date set, then to the extent a court wishes to allow for other continuances by local rule (such as mediation has not been completed), then it should be up to the individual courts. Otherwise, once an RFO has been with a fixed hearing date has been set and served, a party should be filing a noticed motion, and if necessary, seek an order shortening time for hearing it if it is so important to move that set date. (1) RFO not served: this situation is easily addressed, and there used to be a wonderful reissuance form that worked quite well, and was used by many courts to provide a new hearing date (reissue a new date or "continue"), which new date was prominently displayed and which had to be attached to the front of the original RFO when being served. (And if I recall correctly, the problems first started when that form was revised to include an "other" box.) Perhaps this old form could be revived and modified to accommodate any RFO not served, i.e. with or without temporary emergency (ex parte) orders, and the court could decide whether to reissue with or without extending such orders. The draft Form FL-306 tries to do too much (making it confusing), and by combining its use for situations in which the RFO was not served, along with RFOs that were	

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			served but where no temporary emergency (ex parte) orders were made, and adding "other" boxes for free form information to be given to the court, you create a potential ethical problem (discussed below). I also do not understand why there are multiple boxes in #6, as the court should only be interested in the dates one is not available (and even those would not be binding), and the "after" box may encourage an unintended push to delay more than is needed. (2) Agreement to Continue: this situation is also easily addressed, however I would point out that the draft Form FL-308 makes and instructions infer it will get completed and filed by the court – i.e. the court will in fact make an order if it is submitted (and the chart says so too) – but that is not necessarily true if the court does not agree with the "agreement" of the parties – essentially a denial – in which case it becomes very important that this document NOT get accidently filed when not signed – as it can inadvertently cause problems on a court's case management system given its title. Limited Circumstances or Emergency Once an RFO has been served: Under the FL code, there are only a few instances where a continuance is allowed as a matter of right (JC staff is aware of these). And if a limited form is needed there, then create one for those few limited circumstances. Otherwise, at least in the	The committee is recommending the option for an "After" box in situations that are not necessarily dependent on party or attorney unavailability on certain dates (e.g. parties requesting more time for settlement or mediation). The FL-304-INFO form, *How to Reschedule a Hearing in Family Court* (formerly FL-306/FL-307/FL-308-INFO), in item 2, specifically instructs the parties to present the signed agreement to the court. However, in response to the commenter's concern, the committee has added an additional sentence stating that the agreement is not an order until signed by a judicial officer. The committee anticipates that local courts will process the FL-308 the same way all other proposed agreements are currently handled prior to being signed by a judicial officer, to avoid the situation that the commenter has described. The committee has recognized that there is a demonstrated need to have statewide uniform rules and forms to cover all requests to reschedule a hearing. Currently, courts routinely receive requests to reschedule up until the date of hearing, by attorneys and self-represented

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			situations when the RFO has been served with a set date, it should stay set unless it is absolutely necessary (an emergency) to move it. To do otherwise raises various concerns addressed further below. If there is a category of cases, where courts find it helpful to have an optional form developed for use after an RFO has been served, such as those courts whose custody/visitation protocol is more fluid (e.g. orientation and mediation did not occur before the hearing date), which does not happen in all courts as their systems flow differently), perhaps just address that category, although I believe that really should be left to the individual courts – but please do not just open it up to general requests to reschedule after a firm date has been set (anyone who believes they have "good cause") as that just invites both attorneys and pro per litigants to use the forms more frequently in situations that are not warranted. To respond by saying the judicial officer can always simply deny the request, does not address the extra workload concerns, and other concerns noted below. CONCERNS Practical and Procedural concerns: One big reason it is important to keep the date set once an RFO is served, and not allow general requests to reschedule unless it is	litigants, and are already exercising their discretion to approve or deny these requests based on good cause. By providing more clear guidelines for filing the request to reschedule at least 5 court days prior to the hearing and providing designated forms that are used only for this purpose, the committee believes that this proposal will lead to a more predictable, understandable, and efficient process for the courts and the public. The committee has made the request to reschedule forms (FL-306/FL-307) optional to allow courts the flexibility to continue using any local forms and procedures that currently exist for requests to reschedule a hearing. The committee has recognized that there is a demonstrated need to have statewide uniform rules and forms to cover all requests to

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
#	**Commenter**	**Position**	**Comment**	**Committee Response**
			absolutely necessary to move it is that as a practical matter, the other party (often times a pro per) has relied upon that date to arrange for coverage at and time off of work, child care, etc.. I hear repeatedly in my court that a person is in danger of losing their job if they have to take another day off. And if these new forms are allowed to be filed up to only five days before, or worse, up until the hearing date, there will likely be individuals who end up showing up anyway, only to be told the matter was continued. Once again, to allow the date to be moved for anything other than for exigent, emergency circumstances – for which there is/was an established ex parte process – interjects more work for everyone, and more confusion as to which forms, rules apply. To respond that a court can always deny the request, does not address this reliance issue. Operational and Workload concerns: The proposed system creates another layer of daily work for both the staff and the bench for more situations than was previously allowed under the pre-2017 system. It is more work for the clerks, who will now have to figure out if the litigant is using the correct form(s), track the forms, track timing and track down any opposition, track the bench officer to get it put under his/her nose, so to speak, and process the paperwork. In addition,	reschedule a hearing. Currently, judicial officers routinely receive requests to reschedule up until the date of hearing, by attorneys and self-represented litigants, and are already exercising their discretion to approve or deny these requests based on good cause. By providing more clear guidelines for filing the request to reschedule at least 5 court days prior to the hearing and providing designated forms that are used only for this purpose, the committee believes that this proposal will lead to a more predictable, understandable, and efficient process for the courts and the public. The committee is now recommending a later implementation date of July 1, 2020 to allow courts more time for staff and judicial officer training, as well as updating internal business processes and case management systems. Overall, commenters from the superior courts did not express any concern about additional ongoing workload issues, other than the initial implementation time that would be required.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			there is a greater danger, with no hearing dates on the request forms submitted and served, coupled with the fact that some courts do not have an immediate turn around time for opening mail and getting it to the right place the same day (e.g. if someone sent response by fed-ex), for the opposition papers not to get to the appropriate clerk in time, and thus the court not having all the proper paperwork to review in a timely fashion. It is more work for the judicial officer, who may have already prepared a tentative ruling, and who now may be faced with reviewing information from a pro per that actually amounts to an ex parte communication (addressed further below under ethical concerns). And when the "good cause" is really non-existent, it intrudes upon the other bench work needing to get done. Since the rules were changed in 2017, I have seen an increase in the attempts by attorneys and pro pers to try to get their hearing dates moved – including one recently where the pro per (who filed the RFO, which was also served) now wanted to move the date because it conflicted with a lab class which they did not want to miss. I had another individual who had been served with an RFO and date certain, who wanted to continue the hearing date to an unspecified date in the future because there was an unrelated matter pending in another court and she did not want to come to	

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			my court until the other matter was resolved. I could go on…and on… and am saddened at the wasted time and paperwork that these requests cause since the rules were first changed in 2017. In addition, from a court perspective, there are many times where the court may wish to make an interim order before allowing a continuance, especially in a Title IV-D court, where often one is dealing with amounts coming out of a person's paycheck, which can be difficult to do on short notice, and requires more careful deliberation. It is more work for the FLFs/Self-Help Centers, who have to spend more time explaining which forms to use and examining (including looking up if the litigant failed to bring their filed RFO) the content of the served RFO to determine what types of temporary or emergency orders were made to figure out which forms to utilize. When it was just the prior ex parte process – again, before changes were made the first time around in 2017 – family law facilitators had a consistent way to explain the process and provide information to the litigant indicating it really needed to be an emergency if the RFO had already been served on the other party. As a practical matter, it is now going to be even harder in my view for a pro per to understand exactly what they need to do – both to initiate and respond, because there are so many	The committee has reviewed comments submitted from a Self-Help Center and several others from superior courts who agree that the proposal meets its stated purpose and would lead to greater consistency and reduced court hearings. In addition, commenters generally agreed that having a 5 court day guideline for submitting a request to reschedule before the hearing was needed.

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			variables and more rules and forms to sort through, as well as the fact that the actual paperwork to be served has no date on it whatsoever. E.g. New Rule 5.95(c)(1)(A)(ii) – where the RFO has already been served and someone wants to request the hearing be "re-scheduled" – tells the individual that they must first notify and serve the other party, and that "Notice…must be completed as required by rules 5.151 through 5.169." When you go to those rules 5.151(c) refers the individual back to 5.95 for the required documents, and 5.167(a) Method of Notice, states "Notice of appearance at a hearing to request emergency orders may be given [various ways]…" -- yet there is no "appearance at a hearing" when using the new forms, and no clear way for a responding litigant to really know what to do by what time. So, while FL-303 actually has a box with a date on it (which is pretty clear and what folks are used to looking at), ironically THAT document is not the one required to be served; instead a party may only receive the Request to Reschedule (FL 306 or FL 307), which has no dates, and a telephone message would have simply been left saying I'm going to submit my request to the court tomorrow. The new rules being proposed have so many sections and sub-sections and sub-provisions to	

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			those sub-sections that it is extremely difficult to follow and understand. I would recommend a comprehensive review to simplify (back to a clearer version of what existed prior to the changes made in 2017). Ethical concerns: Please refer to CJEO Formal Opinion 2014-004 While I understand the local rule in question that was examined in CJEO Formal Opinion 2014-004 - JUDICIAL SCREENING OF EX PARTE APPLICATIONS FOR NON-DOMESTIC-VIOLENCE EMERGENCY FAMILY LAW ORDERS is different, the underpinning concept in the opinion regarding the dangers of information being presented on an ex parte basis – especially where a proposed form allows a litigant to put in any additional information even where the only reason is because the RFO wasn't served – apply here. Pro per litigants are notorious for wanting to "add" information about how bad the other parent is behaving, which would be wholly inappropriate for a judicial officer to review where the RFO has not been served, for example. In addition, the changes in the rules – beginning with the 2017 changes and continuing with the proposed changes – have created a system for the parties to essentially "duke it out" on extremely short notice anytime there is no agreement to reschedule once an RFO has	Based on the committee's recommendations, any request for rescheduling a hearing must be noticed and served on the other party, unless the requirement is waived by the court for good cause, consistent with existing ex parte rules 5.151 through 5.169. Any additional information included in an "other" box on a form that a requesting party submits to the court therefore, must be provided to the other party before the court decides on the request. Accordingly, the committee does not believe that the proposed forms provide any greater opportunity or encouragement for parties to submit ex parte communication to the court, without first completing notice and service to the other party.

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			been served – and the forms allows parties to write in all kinds of information (in "other" boxes) for any other reasons beyond emergency reasons, which also invites potential ethical issues and due-process issue (the latter being that the responding party is given 24 hours to potentially address all kinds of information put into a request). If the rules and forms not limited and simplified, as well as separated out as noted above, e.g. one category for no timely service (where no extraneous information is being invited) and for true emergencies, the risk is much greater for problems to arise. Due-process concerns By creating forms that do not have specific hearing dates on them indicating exactly when a party will be presenting a request to reschedule – the way ex parte emergency requests were working before the changes were made in 2017 (and where, for example pre-2017 an RFO request for continuance would be set on shortened time, and not necessarily decided on the spot) – I remain concerned that the notice given is too vague for the other side in these situations, as well as the time to adequately respond too short. Telling the party to read the INFO instructions (multiple pages) is only going to create more confusion, as reading those is like reading the instructions to find one's way	The committee was intent on not creating separate notice and service requirements for requests to reschedule a hearing by aligning the process with existing rules (both statewide and local), and procedures used in courts for all family law ex parte requests contained in rules 5.151 through 5.169. In a review of local rules across the state, the committee noted that the process courts use to decide ex parte requests to reschedule a hearing vary considerably. Once proof of notice and service of the request to reschedule is submitted, some courts set the issue for hearing and others make a decision based on the pleadings alone. To

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			out of a maze. When an RFO has been served, the hearing date has been one that the responding party has been operating under. The proposed rule does not require the filing of the form FL-306 or FL-307- rather the party must "file or submit" it. If it is merely submitted and served without any date on it (hearing date or filing date), how long does a responding party actually have to submit a response before the court reviews/rules on it? Just looking at it from the pro per litigant perspective (as I do know it well from the court side) I honestly got dizzy trying to find the answer – and to simply refer one to the INFO page (e.g. such as what is stated on proposed FL-310, which tells litigants to check the local rules is adding a layer of research required by a responding party that was not there previously. And again, on such a short time frame, where you are creating a system for litigants to simply ask to re-schedule – for what they think is a good reason, but which is not an emergency, you are inviting unnecessary problems with people showing up (only to find out the matter was continued) or not showing up either to the original hearing date and any continued hearing date (because could not take more time off of work, for example). In sum, I believe the expansion of the number of forms and the creation of more rules and	account for these local differences and allow as much flexibility at the superior court level as possible, the committee decided that using existing ex parte rules would require the least amount of change to court operations, procedures, and business processes. To minimize confusion about the proper procedure to use, the committee has recommended instructions on the notice and service requirements in numerous places throughout the proposed rules and forms. Proposed rule 5.95 requires that notice and service of a request to reschedule, when service has been completed, must follow ex parte rules 5.151 through 5.169. In addition to the instruction included in the INFO sheet, as noted by the commenter, the committee has also included specific instructions on notice and service requirements in forms FL-306 and FL-307, under the "Special Procedures May Apply" section so that attorneys and especially, self-represented parties, are more likely to review and understand the correct procedures to follow.

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			instructions over the past two cycles of rule and forms changes in this area has exacerbated what has always been a balancing act of stability in hearing dates and the need to address emergencies. The process has become more cumbersome and confusing, and quite frankly, needs to be drastically simplified to addressing only those areas noted above. I was considering trying to take the time to address the specific questions and the items form by form, as well as address the rules and instructions on a more particular level, but I ultimately felt that because this area has already become way too confusing, it would take too much time and I honestly do not think small changes to a line or box would make the process any clearer. I also did not want to indicate in any way that adoption of these additional rules and forms are appropriate. Honestly, the process really needs to be dialed back so that it is not so confusing. Thank you for the opportunity to comment. Rebecca Wightman, Commissioner - San Francisco Superior Court	

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Rule 5.2		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	The Department does not oppose replacing references to "continue" with references to "reschedule" throughout the rules. The word "reschedule" is likely to be more widely understood among self-represented litigants than the word "continue." Nonetheless, with respect to the proposed changes to Rule 5.2(b)(11), the Department believes defining the word that is likely known to self-represented litigants—"reschedule"—using terms that are potentially unfamiliar—"'continue the hearing' under the Family Code"—would have an effect opposite to that which is intended. Specifically, defining the familiar using unfamiliar terms may cause self-represented litigants to question whether "reschedule" is a term of art that has a special meaning under the Family Code. This, in turn, may create the confusion the changes to Rule 5.2 intend to alleviate. As such, the Department respectfully requests that the Judicial Council of California (JCC) consider adding language to clarify that "reschedule" and "continue" simply mean to move the hearing to another date and or time.	The committee agrees with the commenter and recommends additional language in rule 5.2(b)(11) further defining the meaning of "reschedule" and "continue."

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Rule 5.94		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	The proposed amendment to Rule 5.94 would make this section of the rules easier to navigate from a subject matter perspective by removing the comprehensive set of requirements applicable to rescheduling hearings from 5.94(f) and making it a standalone rule. Also, the proposed amendment to the title of Rule 5.94 is appropriate as it more accurately reflects the topics covered by the rule in light of the addition of Rule 5.95. In all, the Department does not oppose this change.	No response required.
Superior Court of San Diego by: Mike Roddy Executive Officer	Rule 5.94: Section (e)(2): include a cross-reference to 5.95 such as "Obtain a court order to ~~continue~~ reschedule the hearing <u>as described in rule 5.95</u>."	The committee agrees with the commenter and has added a cross-reference to rule 5.95.

Rule 5.95		
Commenter	**Comment**	**Committee Response**
Julie Camacho Court Manager Ventura Superior Court	➢ The opening paragraph in Rule 5.95(a) should end with the language in Option 1. (There is no reference in Rule 5.92 to deadline for rescheduling the hearing.) ➢ Yes, Rule 5.95(c)(1)(A)(iv) should maintain the language that is in the current rule at 5.94(f)(5)(A)(i), and yes, It has been extremely helpful to have a deadline for submitting the written request so that litigants submit these requests with enough time for the court receive, rule on and process the request prior to the date of the hearing.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1. In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the *Request to Reschedule* should be submitted at least 5 court days before the hearing date.

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

Candice Garcia-Rodrgio Superior Court of Riverside	CRC 5.95 (c) as it currently reads has led to abuse by the attorneys. Many attorneys do not appear on the day of the hearing. Instead, the attorney will send their client or another person to request to continue the hearing on the same date as the hearing without obtaining a stipulation from the other side (or without notifying the other side). The other side will often want to proceed with the hearing, but the requesting attorney may or may not be present. Unless there is an emergency, the rule should require that a Request to Reschedule be filed no later than 5 court days (or even 5 calendar days) prior to the hearing date so the opposing party has an opportunity to object and/or meet and confer prior to the hearing. The attorneys who appear the day of the hearing to request to reschedule (or do not appear, but send someone with the request or fax it), cause a further a delay in the calendar of an already overburdened family law calendar. Additionally, the rule needs to be made clear that it applies to the party and/or his/her attorney. Attorneys abuse this request procedure by sending their clients to make an oral request, rather than appearing on the date of the hearing to show good cause for a continuance. In other words, the attorney will not appear the date of the hearing, but send their client instead to request to reschedule, knowing the judicial officer will be ethically bound to reschedule or wait to track down the attorney before making any orders. Finally, Rule 5.95 does not clearly specify that if the court grants the request to continue that the requesting party must service notice of the continued hearing date. I would suggest adding that into the new rule. The old rule 5.94 contained such language.	The committee understands and appreciates the commenter's concerns regarding oral requests to reschedule being made at the hearing. However, for consistency, the committee intended all requests to reschedule made orally at a hearing to be permissible, although not preferable. For temporary emergency orders involving property restraint and other enumerated restraining orders, under Family Code section 245, this option is statutorily mandated. In any case, the request to reschedule must still be based on a showing of good cause and will be subject to the exercise of judicial discretion. The committee has addressed notice and service requirements of the rescheduled hearing in the *Order on Request to Reschedule Hearing* (form FL-309), items 9 and 10 and FL-304-INFO sheet (formerly FL-306/FL-307/FL-308-INFO). The committee believes that placing service instructions on the forms, rather than in the rule, increases the likelihood that self-represented litigants will see and better understand what is required.
California Department of Child Support Services	<u>Rule 5.95, subd. (a)</u> Of the two options provided in the Request for Specific Comments, the Department supports option 1, which allows for the party to request the hearing date to be	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the

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

By: Kristen Donadee Chief Counsel and Deputy Director	scheduled without mention of a deadline. <u>Rule 5.95, subd. (a)(2)(B)</u> The Department supports the language in proposed new Rule 5.95(a)(2)(B) that would allow courts to delegate to clerks the authority to reschedule a hearing under the limited circumstances provided in the rule. As noted in the proposal, the change would promote judicial efficiencies by eliminating the need for judicial officers to review and sign each request, especially since the requests anticipated by this change do not involve a change to the temporary emergency (ex parte) orders issued with the FL-300. <u>Rule 5.95, subd. (a)(3)(B)</u> This subdivision provides that the subject papers "must be served on the other party in the case[.]" However, the Department notes that it does not identify who—the requesting party or the court—is responsible for such service. This omission may create confusion among self-represented litigants who mistakenly believe the court would be serving the papers following its order. Therefore, the Department respectfully requests that the JCC consider amending proposed new Rule 5.95(a)(3)(B) to expressly reflect that the requesting party is responsible for service of the appropriate documents if the court reschedules the hearing. Not only would this alleviate the afore-mentioned confusion, but it would bring the terms of Rule 5.95(a)(3)(B) in line with those of Rule 5.95(a)(3)(C). Rule 5.95, subd.(c)(1)(A)(iv) The Department agrees with the proposed language and deadline for either party to submit a request to reschedule the hearing. Including bright-lined guidance, even if only intended as a best practice, promotes clarity for all parties concerned and would be especially beneficial to self-represented litigants.	Request to Reschedule and now ends with the language in Option 1. No response required. The committee agrees with the commenter and has added additional language to renumbered subdivision (b)(3)(B) to clarify that the requesting party is responsible for service. In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.
Harriett Buhai Center for Family Law by: Rebecca L.	Rule 5.95(a)(2)(B) should make it clear that while the court may delegate the authority to reschedule the hearing to a court clerk, the clerk does not have the authority to deny a request to reschedule the hearing. It would be inappropriate for clerks to deny a litigant's request to continue a hearing where the litigant did not fall within the bounds	Proposed rule 5.95 clearly only allows courts to delegate authority to clerks if the request to reschedule is to serve the other party and does not request any changes to temporary emergency

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Fischer Staff Attorney	of 5.95(a)(2)(B), but may have other good cause to warrant a continuance. The language should be specific that a denial of a request to continue must be made by the court not by a clerk.	orders. Any other unauthorized actions by a clerk, including a denial, not otherwise allowed by statute or rule (e.g. rule 5.92(e)), would be prohibited.
Judy Louie Director/Family Law Facilitator ACCESS Center Superior Court of San Francisco	• Specific comments re rule 5.95. o 5.95(a): option 2 is better because it gives the court the discretion when dealing with SRLs who may have good cause. • As for rest of the rule 5.95: yes to all for the reasons stated above-for SRLs more info the better and also for consistency.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1. No response required.
Orange County Bar Association By: Deirdre Kelly, President	The proposed change to Rule 5.95 (a) contains two options, first option is "the other party must ask the court to reschedule the hearing date." The second option sets forth the requirement that 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. Rule 5.92 sets forth the procedural requirements for filing an RFO and refers to CCP 1005 for service requirements. Many litigants in family law are self-represented. The inclusion of 5.92 may cause more confusion to self-represented individuals. The first option sets forth that the party must ask the court to reschedule the hearing date. The first option will be less confusing for self-represented individuals and should be used. Rule 5.95 (c): The form should contain the language that the request to continue should be no later than five court days before the hearing date. This will provide a guideline for attorneys and self-represented individuals and be helpful to the clerks if the suggested guideline is followed. The proposal appropriately addresses the stated purpose, except that the revised Rule 5.94 should expressly state "court" days for when notice of the request for continuance should be given to avoid confusion about when the notice for the continuance should be requested.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1.

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

Superior Court of Los Angeles	**Proposed Modifications** **<u>Rule 5.95(c)(1)(A)(v)</u>** – This rule indicates that: "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 request." [emphasis added] This suggests that this request must be made at least 5 days prior to the court hearing and that the court must hold these requests until the hearing date to determine if a responsive declaration is filed. This section needs clarification as to when the responsive declaration should be filed. **Modification:** Provide deadline to file the responsive declaration or by the hearing date. **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 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.** Option 2 is clearer. **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)?**	In a review of local rules statewide, many courts either have very specific rules and procedures for responding to a request to reschedule or do not have any local rules or procedures for the filing of a responsive declaration to a request to reschedule at all. To allow for the various local rules and processes already in place, some with varying deadlines, the committee decided to simply provide an optional form (FL-310) for courts to use, if needed, and not state a specific timeline for filing a responsive declaration statewide. The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1.

	Yes, the rule should maintain this language. **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?** Yes, it has been helpful. **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.**	No response required. No response required.
Superior Court of Riverside by: Susan Ryan Chief Deputy of Legal Services	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. The opening paragraph of rule 5.95(a) should end with the language in Option 2. Option 2 provides information regarding the filing requirement deadline when requesting to reschedule a hearing. Suggestion: Instead of directing/referring the party to the rule, have the rule included in option 2. Ex.: The party must ask the court to reschedule the hearing date no later than five court days before the hearing date set on the request for order, order to show cause, or other moving paper. b. Rule 5.95(c)(1)(A)(iv). Yes, Rule 5.95(c)(1)(A)(iv) should maintain the language that is in the current rule at 5.94(f)(5)(A)(i). It has 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.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial *Request for Order*, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1. In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.
Superior Court of San Bernardino by: Court Executive Office	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	

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

	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. Opening paragraph should end with Option 1; Option 2 adds to confusion and 5.94(f)(5)(A)(i) provides for a date to submit the request for continuance. 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. Yes the rule should maintain the language currently stated in 5.94(f)(A)(i), it's been helpful to have the suggested time frame to submit the request for consistency and uniformity throughout our court with multiple family law divisions.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1. In response to a majority of commenters, the committee has included the language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.
Superior Court of San Diego by: Mike Roddy Executive Officer	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. Option 2. Referring to rule 5.92 provides the requesting	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1.

	party with additional information relevant to the request. 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)? Yes, by providing the deadline it encourages parties to submit their requests sooner rather than later. Maintaining the "five court days" timeframe, reduces the likelihood that a judicial officer will needlessly review a matter that may not go forward and preserve judicial resources to review other matters. 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? Yes. 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. **Rule 5.95:** Consider including application or purpose language at the beginning similar to current rule 5.151**.**	In response a majority of commenters, the committee has included the language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date. No response required.

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

	(a)(1)(A): Consider adding to subsection (ii) or creating a subsection (iii) stating that if a response to the request has not been provided by the court, the party should attend the hearing. A litigant may think that they do not need to attend the hearing if they simply submit the request even though they haven't received a response. **(a)(1)(B):** Propose that language be revised to reflect FL-309 is a mandatory form: 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~~. **(a)(3)(B)** Propose that language be revised to reflect FL-309 is a mandatory form: ~~The order (for example,~~ *Order on Request to Reschedule Hearing* (form FL-309)…" **(c)(1)(B)** Propose that language be revised to reflect FL-309 is a mandatory form: 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~~.	The committee agrees with the commenter and has added an "Application" section to rule 5.95 under new subsection (a). The committee agrees with the commenter and has included additional information to the FL-304-INFO form (formerly FL-306/FL-307/FL-308). The committee agrees with the commenter and has revised the language in rule 5.95 to reflect that FL-309 is a mandatory form.
TCPJAC/CEAC Joint Rules Subcommittee	• Regarding the opening paragraph of rule 5.95(a) which provides language with Option 1 or Option 2, Option 1 is preferable since it is less confusing to require the parties to ask the court to reschedule the hearing date.	The committee has revised the opening paragraph to make clear that the deadline described pertains to service of the initial Request for Order, order to

(JRS), Judicial Council of California	• The language that is in current rule 5.94(f)(5)(A)(i) should be maintained in the new rule.	show cause or other moving paper and not the Request to Reschedule and now ends with the language in Option 1.

Rule 5.151		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	The Department supports replacing references to "continuing" with "rescheduling" as provided in the proposed change. The latter term is more widely used and thus less likely to be misunderstood, especially by self-represented litigants. Similarly, the Department supports directing the parties to proposed new Rule 5.95 in order to find the rules applicable to the subject request. All in all, the changes to Rule 5.151 achieve the intended result of the proposal.	No response required.
Superior Court of San Diego by: Mike Roddy Executive Officer	**Rule 5.151(b)(3)(C):** The rule references rescheduling a trial but Form FL-303 does not list trial as something to reschedule.	The committee considered the commenter's suggestion, but decided to not make any changes to form FL-303 to add "trial" at this time.

Rule 5.165		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	The Department agrees with the proposed changes to this rule. Expressly articulating the various means by which a party can provide notice "in writing" promotes clarity, especially when the notion may not be intuitive to some litigants.	No response required.
Superior Court of San Diego by: Mike Roddy Executive Officer	**Rule 5.165:** Propose that "if permitted" be added in parentheses following electronic means.	The committee agrees with the commenter and has added "(if permitted)" to rule 5.165.

	The proposal to clarify "in writing" seems beneficial for the rule and adding "electronic means" seems appropriate. Consider adding a cross-reference to what "electronic service" means as a self-represented litigant may think that means by social media or text.	

Form FL-303		
Commenter	**Comment**	**Committee Response**
Candice Garcia-Rodrigo Superior Court of Riverside	FL-303: There is a typographical error in the caption. It should be "Temporary" not "Temporaray".	The typographical error has been corrected.
Superior Court of San Diego by: Mike Roddy Executive Officer	**Form FL-303:** **Items 4a(2 & 3):** As written, the current reference to FL-309 appears to indicate that the form is optional rather than mandatory. "FL-309 may be used…"	The committee agrees with the commenter and has revised the language to reflect that FL-309 is mandatory.

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Form FL-306		
Commenter	**Comment**	**Committee Response**
Candice Garcia-Rodrigo Superior Court of Riverside	FL-306, #10.: As stated above, I believe the deadline should be mandatory, such that the JC form says "You must..."	The proposal did not recommend making the 5 court day timeline mandatory because the Family Code allows requests to reschedule for cases involving certain emergency orders (e.g. property restraint) to be made orally at a hearing. Also, generally, a request to reschedule can be requested for "good cause" at any time and granted or denied, in the court's discretion.
Harriett Buhai Center for Family Law by: Rebecca L. Fischer Staff Attorney	Form FL-306: Form should not include item 10. This section will be confusing for litigants representing themselves. While the distinction between "must" and "should" is well understood by attorneys, a pro per litigant may lump these categories together and may deem their action barred by item 10 even if good cause exists for filing the request to continue less than 5 court days before the hearing date. The association with items 8 and 9 is strengthened by the items falling under the same heading. In the event this language is included, it should be visually separated from items 8 and 9 and/ or should include language further qualifying that item 10 is best practice, not an absolute requirement.	The committee has opted to include guidance in the proposed rule and forms, to file a request to reschedule at least 5 court days before the hearing. In response to the commenter however, the committee has added additional language in item 10 for "good cause" requests.
Judy Louie Director/Family Law Facilitator ACCESS Center Superior Court of San Francisco	• Items 10 in forms FL-306 and FL-307: o Should continue to include a provision that the party submit the request and other docs to the court 5 days before the hearing date as more instruction is better for SRLs.	In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.

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

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Superior Court of Los Angeles	**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.** Yes, the item 10 should be included. It will help with reduction in judicial and calendar preparation and gives time for response.	Same as above response.
Superior Court of Riverside by: Susan Ryan Chief Deputy of Legal Services	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. Yes, item 10 on form FL-306 should specify that the party should submit the documents in item 9 to reiterate the rule for requesting to reschedule a hearing. It provides clear instructions to the court user as to what is needed to file their request properly.	Same as above response. .
Superior Court of San Bernardino by: Court Executive Office	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. Yes, this provides information that is stated in the court rule that is helpful to the filing party.	Same as above response.
Superior Court of San Diego by: Mike Roddy	a. Form FL-306. Should item 10 on the form be included to specify that the party should submit the documents in item	

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

Executive Officer	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. Yes, by providing the deadline it encourages parties to submit their requests sooner rather than later. Maintaining the "five court days" timeframe, reduces the likelihood that a judicial officer will needlessly review a matter that may not go forward and preserve judicial resources to review other matters. **Form FL-306:** **Item 11**: As written, the current reference to FL-309 appears to indicate that the form is optional rather than mandatory. "FL-309 may be used…" All proposals seem beneficial, particularly the option to specify dates for the rescheduled hearing. It may be helpful to clarify that a rescheduled hearing would not modify the period of retroactivity to a date later than that upon which the initial RFO was filed (see FC §§ 4009 and 3653). However, based upon the language of the statutes, this might be completely unnecessary.	Same as above response. The committee agrees with the commenter and has clarified the sentence so that FL-309 is understood as a mandatory form.
TCPJAC/CEAC Joint Rules Subcommittee (JRS), Judicial Council of California	Regarding Form FL-306 and FL-307, Item 10 on these forms should 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 to avoid last minute filings that are more problematic than helpful.	In response to a majority of commenters, the committee has included recommended language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.

Form FL-306/FL-307/FL-308-INFO

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Commenter	Comment	Committee Response
Harriett Buhai Center for Family Law by: Rebecca L. Fischer Staff Attorney	Form should not include item 10. This section will be confusing for litigants representing themselves. While the distinction between "must" and "should" is well understood by attorneys, a pro per litigant may lump these categories together and may deem their action barred by item 10 even if good cause exists for filing the request to continue less than 5 court days before the hearing date. The association with items 8 and 9 is strengthened by the items falling under the same heading. In the event this language is included, it should be visually separated from items 8 and 9 and/ or should include language further qualifying that item 10 is best practice, not an absolute requirement.	In response to a majority of commenters, the committee has included recommended language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date. However, the committee has now added additional language in item 10 for exceptional "good cause" requests.
Superior Court of Los Angeles	**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.** Yes, it provides guidance to litigants not to wait until the last minute to file such requests.	In response to a majority of commenters, the committee has included recommended language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.
Superior Court of Riverside by: Susan Ryan Chief Deputy of Legal Services	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. Yes, forms FL-306/FL-307/FL-308 should specify that the party should submit the documents in item 9 to reiterate the rule for requesting to reschedule a hearing. It provides clear	Same as response above.

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

	instructions to the court user as to what is needed to file their request properly.	
Superior Court of San Bernardino by: Court Executive Office	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. Yes, this provides information that is stated in the court rule that is helpful to the filing party	Same as response above.
Superior Court of San Diego by: Mike Roddy Executive Officer	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. Yes, by providing the deadline it encourages parties to submit their requests sooner rather than later. Maintaining the "five court days" timeframe, reduces the likelihood that a judicial officer will needlessly review a matter that may not go forward and preserve judicial resources to review other matters. **Form FL-306/FL-307/FL-308-INFO:** Include language somewhere that the party should attend the hearing if they do not receive a response to their request to continue the hearing. Form number is unnecessarily long. Propose that a single form number be used. **Item 1:** "You can ~~get~~ find these rules…"	Same as response above.

	Item 4: There is a period missing between the two sentences in the third paragraph. **Items 5 & 6:** As written, the current references to FL-309 appear to indicate that the form is optional rather than mandatory. "FL-309 may be used…" **Item 7**: Propose that first bullet point be replaced with the following: *"Order on Request to Reschedule Hearing* (form FL-309);"	
TCPJAC/CEAC Joint Rules Subcommittee (JRS), Judicial Council of California	Regarding Form FL-306, FL-307 and FL-308-INFO these forms should include current requirements for submitting requests to reschedule no later than five days before the hearing date to avoid last minute filings that are more problematic than helpful.	Same as response above.

Form FL-307		
Commenter	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law by: Rebecca L. Fischer Staff Attorney	Form should not include item 10. This section will be confusing for litigants representing themselves. While the distinction between "must" and "should" is well understood by attorneys, a pro per litigant may lump these categories together and may deem their action barred by item 10 even if good cause exists for filing the request to continue less than 5 court days before the hearing date. The association with items 8 and 9 is strengthened by the items falling under the same heading. In the event this language is included, it should be visually separated from	In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date. However, the committee has added additional language in item 10 for exceptional "good cause" requests.

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

	items 8 and 9 and/ or should include language further qualifying that item 10 is best practice, not an absolute requirement.	
Judy Louie Director/Family Law Facilitator ACCESS Center Superior Court of San Francisco	• Items 10 in forms FL-306 and FL-307: o Should continue to include a provision that the party submit the request and other docs to the court 5 days before the hearing date as more instruction is better for SRLs.	In response to a majority of commenters, the committee has included language in the proposed rules and forms stating that the request to reschedule should be submitted at least 5 court days before the hearing date.
Superior Court of Los Angeles	**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.** Yes, the item 10 should be included. It will help with reduction in judicial and calendar preparation and gives time for response.	Same as response above.
Superior Court of Riverside by: Susan Ryan Chief Deputy of Legal Services	c. Form FL-307. item 10 Yes, item 10 on form FL-307 should specify that the party should submit the documents in item 9 to reiterate the rule for requesting to reschedule a hearing. It provides clear instructions to the court user as to what is needed to file their request properly.	Same as response above.
Superior Court of San Bernardino by: Court Executive Office	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. Yes, this provides information that is stated in the court rule that	Same as response above.

	is helpful to the filing party.	
Superior Court of San Diego by: Mike Roddy Executive Officer	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. Yes, by providing the deadline it encourages parties to submit their requests sooner rather than later. Maintaining the "five court days" timeframe, reduces the likelihood that a judicial officer will needlessly review a matter that may not go forward and preserve judicial resources to review other matters. **Form FL-307:** **Item 11**: As written, the current reference to FL-309 appears to indicate that the form is optional rather than mandatory. "FL-309 may be used…" The proposal to create a new form and include the information indicated seems beneficial.	Same as response above.
TCPJAC/CEAC Joint Rules Subcommittee (JRS), Judicial Council of California	Regarding Form FL-306 and FL-307, Item 10 on these forms should 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 to avoid last minute filings that are more problematic than helpful.	Same as response above.

SPR19-27

Family Law: Changes to Continuance Rule and Forms (Adopt rule 5.95; amend rules 5.2, 5.94, 5.151, and 5.165; approve forms FL-304-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307)

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

Form FL-308		
Commenter	**Comment**	**Committee Response**
California Department of Child Support Services By: Kristen Donadee Chief Counsel and Deputy Director	There appears to be an omission from the language following the checkbox provided in section 7.b.(1). As such, the Department respectfully proposes adding the number "6" at the end of this section so it reads "the end of the new hearing in item 6."	The typographical error has been corrected.
Judy Louie Director/Family Law Facilitator ACCESS Center Superior Court of San Francisco	Need more information re FL-308 to make it clear it is only for stipulations to rescheduling.	The committee agrees and has added "(form FL-308)" to the subheading of item 2 of the FL-304-INFO sheet (formerly FL-306/FL-307/FL-308) to make instructions more clear.
Superior Court of San Diego by: Mike Roddy Executive Officer	**Form FL-308:** **Item 6:** Propose that the word "(continued)" be removed. It is not consistent with the language used on item 6a of proposed form FL-309 and is unnecessary. Consider adding an option for the parties to attach a stipulation/agreement. regarding modified TEOs or add a note that form **Item 7**: Option for parties to agree to modifications of the TEOs?	The committee agrees and has removed, "(continued)" from item 1 of form FL-308. The committee discussed this option but decided not to include it because the proposed rules and forms are only to reschedule a court hearing, unless the court modifies any existing orders on its own. Should the parties wish to enter a stipulation modifying emergency orders, a separate agreement can be filed, as FL-308 is an optional form.
Form FL-309		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles	**Form FL-309** – Add to title so that self-represented litigants and attorneys know this form is also required when they use form FL-307. "Order on Request to Reschedule Hearing; Includes Temporary Emergency (Ex Parte) Orders"	The committee considered adding the suggested language to the title of FL-309 but determined that it was too lengthy. The FL-304-INFO sheet (formerly FL-306/FL-307/FL-308-INFO) and rules consistently inform parties to use FL-309 along with both FL-306 and FL-307. In addition, it is anticipated that Self-Help Center staff will be able to provide additional guidance and clarity.

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

Item number: 27

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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: 04/10/19
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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Family Law: Certification of Statewide Uniform Guideline Support Calculators

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.275

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 7, 2019

Contact
Gary Slossberg, 916-263-0660
gary.slossberg@jud.ca.gov

Executive Summary

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), to improve consistency in child support calculations for low-income obligors, and to delete the requirement to submit an application form and fee for certification to better align with current practice for certifying guideline calculators.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, amend California Rules of Court:

1. 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; and

2. 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.

The text of the amended rule is attached at page 5.

Relevant Previous Council Action

Rule 5.275 was adopted by the Judicial Council as rule 1258, effective December 1, 1993. It was amended, effective January 1, 2000, to add a subsection clarifying that all certified support calculators are acceptable in superior courts to avoid giving preference to a particular software. It was further amended to mandate the use of the California Department of Child Support Services calculator for all title IV-D child support proceedings, effective January 1, 2009. Most recently, the council amended rule 5.275, effective January 1, 2016, to add a provision defining *software*.

Analysis/Rationale

Inconsistent application of the low-income adjustment

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) are entitled to a low-income adjustment to reduce their child support obligation. Under 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 under 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 may be a cause 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.

Under Family Code section 3830, the council has the authority to mandate how the low-income adjustment is displayed. The statute requires courts to 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. Since the rule's adoption in December 1993, the 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. Amending rule 5.275 to standardize how the

low-income adjustment range is displayed will bring about greater uniformity among the support calculators, thereby promoting more consistent application of the low-income adjustment by judicial officers.

Provision regarding application form and fee not aligned with current practice

Additionally, rule 5.275(i) requires that software developers complete and submit an application form supplied by the Judicial Council, along with an 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, fees that are collected have to be forwarded to the federal government rather than used to offset the costs of certifying the software. As such, the AB 1058 Program has returned all application fees. To align with current practice, the committee proposes amending subdivision (i) to remove the requirement to submit an application form and fee to the Judicial Council to be certified and to replace it with a requirement that any person seeking certification of software must apply in writing to the Judicial Council, but not on any specified form.

Policy implications

Because these recommendations improve litigants' access to appropriate child support orders based on a litigant's individual economic circumstances, they support Goal I, Access, Fairness, and Diversity, of the council's Strategic Plan for California's Judicial Branch.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle, from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals. The proposal also went to the Department of Child Support Services, the chairs of the Child Support Directors Association of California's Legal Practices Committee and Judicial Council Forms Subcommittee, and child support commissioners.

Seven organizations provided comment: six agreed with the proposal and one did not indicate a position but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 6–10. Commenters agreed that the proposal would lead to greater uniformity in the application of the low-income adjustment. One commenter added that the proposal would benefit self-represented litigants.

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 will require some developers to make programmatic changes to their software. If making these changes is

overly burdensome, developers could stop providing their product to California. However, none of the current guideline calculator software developers expressed any concerns with adjusting their programs to display the low-income adjustment range on the first page of the printout, and in fact one developer, the California Department of Child Support Services, submitted a comment in support of the proposal. As such, the committee determined that adding this requirement to rule 5.275 was unlikely to be burdensome to the developers and should serve to increase consistency in the application of the low-income adjustment.

The committee also considered not changing 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 amending the subdivision to align with current practice.

Fiscal and Operational Impacts

The committee anticipates that this proposal will neither result in any costs to the branch, nor any requirements for implementation—or fiscal or operational impacts on the courts.

Attachments and Links

1. Cal. Rules of Court, rule 5.275, at page 5
2. Chart of comments, at pages 6–10
3. Link A: Fam. Code, § 4055, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4055.&lawCode=FAM*
4. Link B: Fam. Code, § 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.~~ A person seeking certification of software must apply in writing to the Judicial Council.

(j) * * *

SPR19-29

Family Law: Certification of Statewide Uniform Guideline Support Calculators (Amend Cal. Rules of Court, rule 5.275)

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Selis Koker, Attorney III	A	The department supports the Family and Juvenile Law Advisory Committee's proposal to amend 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. The low-income adjustment range is already displayed on the first page of the department's guideline calculator "Calculation Results Summary" page when the low-income adjustment is applicable based on the support obligor's net income under Family Code section 4055(b)(7). We believe requiring all support calculators to display the low-income range when applicable will help the courts uniformly apply the low-income adjustment. The department also supports the proposal to delete the requirement to submit an application form and fee for certification of support calculators. We have been communicating directly with AB 1058 Program staff for the department guideline calculator's annual certification, which has been a very efficient process.	No response required.
2.	California Lawyers Association, Family Law Section, Executive Committee	A	N/A	No response required.
3.	Child Support Directors' Association of California by Ronald Ladage Chair, CSDA Judicial Council Forms Committee Director/Chief Attorney, El Dorado County Department of Child Support	A	The CA DCSS guideline calculator printout currently displays the low-income adjustment range on the first page of the results when the adjustment applies. The committee agrees that displaying the adjustment on the first page is a good reminder to courts that use of the adjustment is a rebuttable presumption under	No response required.

	Commentator	Position	Comment	Committee Response
	Services		Family Code §4055.	
4.	Orange County Bar Association by Deidre Kelly, President	A	The proposal appropriately addresses the stated purpose. No further rules/forms changes are needed.	No response required.
5.	Superior Court of California, County of Los Angeles	A	Are there specific changes that would improve the proposed rule? If so, please specify the recommended changes. No specific changes are needed. Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose. What is the impact of this proposal on low- and moderate-income persons? This proposal provides more uniformity in orders between courtrooms, and across the state. 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. We do not anticipate cost savings. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of	No response required.

	Commentator	Position	Comment	Committee Response
			training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements include training of Judicial Officers, Research Attorneys, and Self-Help staff. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Three months would be sufficient for the court. Implementation time for the software developers is unknown. How well would this proposal work in courts of different sizes? Impact should be similar for courts of different sizes.	
6.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	Q: Are there specific changes that would improve the proposed rule? If so, please specify the recommended changes. No. Q: Does the proposal appropriately address the stated purpose? Yes. Q: What is the impact of this proposal on low-	No response required.

	Commentator	Position	Comment	Committee Response
			and moderate-income persons? Consistent application of the low-income adjustment. 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. Notifying judicial officers and staff. Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of all sizes. No additional comments.	
7.	Superior Court of California, County of San Francisco, ACCESS Center	NI	Requiring low income adjustment info on the first page of all c/s calculations would be	No response required.

SPR19-29

Family Law: Certification of Statewide Uniform Guideline Support Calculators (Amend Cal. Rules of Court, rule 5.275)

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

	Commentator	Position	Comment	Committee Response
	by Judy B. Louie, Director/Family Law Facilitator		helpful to SRLs.	

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

Item number: 28

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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: Item 9 (c), AB 1058 Program Rule & Statutory Changes: 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Family Law: Duty of Judge Hearing Matter Under Family Code Sections 4251(a), 4252(b)(7)

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.305(b)

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending the rule 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. By removing the requirement that a judge must make an "interim" order with a follow-up hearing set in front of a commissioner, costs currently incurred by the courts, parties, and local child support agencies resulting from the second hearing would be eliminated.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020, amend California Rules of Court, rule 5.305(b) to more clearly define the roles of the judge and the court at the hearing, as authorized in Family Code sections 4521(a), 4252(b)(7).

Relevant Previous Council Action

The Judicial Council adopted California Rules of Court, rule 1280.1[1], effective July 1, 1997, to define the exceptional circumstances under which a judge may hear a title IV-D matter when a child support commissioner is unable to do so. Minor technical and formatting amendments were made to the rule effective January 1, 2003, and January 1, 2007.

Analysis/Rationale

While the Family Code allows for a judge to hear a title IV-D matter, only when a child support commissioner is unavailable due to "exceptional circumstances," defining what constitutes "exceptional circumstances" was left to the Judicial Council. (Fam. Code, §§ 4251(a), 4252(b)(7).) (See Link A.)

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 a temporary order and the motion is subsequently calendared to be heard by a title IV-D child support commissioner when 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.

Moreover, interpreting the rule as requiring the judge to only 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, 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 committee therefore recommends amending rule 5.305(b) to clarify that the judge has the discretion to make a substantive order or to instead make an interim order and refer the matter back to the commissioner for further proceedings by deleting the term "must" and instead state the judge "may make an order or may make an interim order and refer the matter to the commissioner…when appropriate." In addition, the committee recommends that the rule be amended to add a sentence stating "any future proceedings" must be heard by a child support commissioner, so long as the local child support agency remains a party to the case. The full text of the amended rule is attached at page 5.

Policy implications

By removing the requirement that the judge must make an "interim" order with a follow-up hearing then set in front of a commissioner, costs currently incurred by the courts, parties, and

[1] Effective January 1, 2003, this rule was renumbered to rule 5.305.

local child support agency resulting from the second hearing would be eliminated. 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 for childcare, and pay for transportation or parking to attend such a court hearing.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle, from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, and other family law professionals. The proposal also went to the Department of Child Support Services, the Child Support Directors Association of California's Legal Practices Committee chair, and child support commissioners.

Eleven organizations and individuals provided comment: six agreed with the proposal, four agreed with the proposal if modified, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 6–16.

Included in the invitation-to-comment was the following question "[s]hould the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner?" Two commentators answered "no" and five commentators answered "yes" to this question or offered other comments that would support this position. In support of the "yes" position, one commentator stated that they believed "the judge should have discretion to make temporary orders." This sentiment was echoed by three other commentators. The committee considered these comments, recommends that the rule be further amended to include this provision, and has made this change.

Alternatives considered

Amendments to rule 5.305 are needed to ensure uniformity statewide regarding 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 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.

Attachments and Links

1. Cal. Rules of Court, rule 5.305, at page 5
2. Chart of comments, at pages 6–16
3. Link A: 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 is 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) Exceptional circumstances

The exceptional circumstances under which a judge may hear a title IV-D support action include:

(1) The failure of the judge to hear the action would result in significant prejudice or delay to a party including added cost or loss of work time;

(2) Transferring the matter to a commissioner would result in undue consumption of court time;

(3) Physical impossibility or difficulty due to the commissioner being geographically separate from the judge presently hearing the matter;

(4) The absence of the commissioner from the county due to illness, disability, death, or vacation; and

(5) The absence of the commissioner from the county due to service in another county and the difficulty of travel to the county in which the matter is pending.

(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~~ may make an order or may make an interim order and refer the matter to the commissioner for further proceedings when appropriate. 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) Discretion of the court

Notwithstanding (a) and (b) of this rule, a judge may, in the interests of justice, transfer a case to a commissioner for hearing.

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Lucila Ledesma, Attorney	A	The California Department of Child Support Services wishes to provide the following comments in support of the proposed amendment to California Rules of Court, rule 5.305(b). *Does the proposal appropriately address the stated purpose?* Yes, the proposal creates efficiencies for all parties involved by allowing the judge hearing the matter to make a judgment that does not require review and ratification by a IV-D commissioner and therefore eliminates the need for a second hearing on the same issue. *Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner?* No, this would essentially negate the proposed change in some cases. It could also have the effect of causing a commissioner, who is a temporary judge, to overrule the actions of a permanent judge. Any matter that a commissioner can definitively decide, a judge can definitively decide.	No response required. The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption.

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

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
2.	Orange County Bar Association by Deirdre Kelly, President	AM	*Does the proposal appropriately address the stated purpose?* The proposal appropriately addresses the stated purpose. However, there is likely to be issues with the undefined term "exceptional circumstances." *Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner?* The current state of the law regarding IF there can be a "temporary" support order is that our statutes do not provide for such an order. IRMO Goodman& Gruen (2011) 191 Cal.App.4th 627 holds for the proposition that court orders cannot be modified until/unless a party files a motion, and then retroactivity can only be to the filing date of that motion. The amendment to the Rule of Court regarding "temporary orders" creates a certain amount of confusion unless the Family Code is changed.	The Invitation to Comment for this proposal only included the section (b) of the rule that the committee is proposing to amend; the list of "exceptional circumstances" is set forth in rule 5.305(a). No response required.
3.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM)	N	FLEXCOM does not agree with this proposal. FLEXCOM's concern is that the proposal may encourage a practice of a judge making non-interim orders in a Title IV-D case as the norm, instead of as an	The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that

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

	Commenter	Position	Comment	Committee Response
			exception to the rule. Such a practice could give more frequent rise to substantive and/or procedural errors by judges that are unfamiliar with Title IV-D regulations, the guideline support calculator used in Title IV-D cases, and other unique provisions and requirements of the Title IV-D program.	it is recommending for adoption.
4.	Superior Court of Orange County, Juvenile Court and Family Law Divisions	AM	**Rule 5.305 Hearing of matters by a judge under Family Code sections 4251(a) and 4252(b)(7)** If possible, clarify or provide examples of what would be considered exceptional circumstances. "A judge…must make an order" is also somewhat vague. Is this a support order only or just an order for continuance for a commissioner to hear the case when one is available? **Request for Specific Comments** *Would the proposal provide a cost savings?* No, there will not be a cost savings. *What would the implementation requirements be for courts?* Judges and staff would be informed of the changes.	The Invitation to Comment for this proposal only included the section (b) of the rule that the committee is proposing to amend; the list of "exceptional circumstances" is set forth in rule 5.305(a). The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption. No response required. No response required.

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
			Would 3 months from the Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months would be sufficient time to implement the changes.	No response required.
5.	Superior Court of California, County of San Diego by Mike Roddy, Executive Director	A	*Does the proposal appropriately address the stated purpose?* Yes. *Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner?* Yes. *Would the proposals provide cost savings? If so, please quantify.* Yes, by eliminating the need to set a further hearing and the associated work (e.g., calendar prep, case updating, etc.) *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),*	No response required. No response required. No response required.

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

	Commenter	Position	Comment	Committee Response
			changing docket codes in case management systems, or modifying case management systems. Notify judicial officers and staff. *Would three months from Judicial Council approval of these proposals until their effective date provide sufficient time for implementation?* Yes. *How well would these proposals work in courts of different sizes?* It appears that the proposal would work for courts of all sizes.	No response required. No response required. No response required.
6.	Judy B. Louie, ACCESS Center, Director/Family Law Facilitator, Superior Court of San Francisco County	A	proposed language is clear	No response required.
7.	Child Support Directors Association of California by Terrie Porter	A	General comment: The proposal makes the rule more clear as to the extent of a judge hearing a IV-D matter and is more cost effective to the LCSA and participants. Does the proposal appropriately address the stated purpose? Yes it does. Should the proposed rule include a provision that states a judge has the	No response required. No response required. The committee discussed if the proposed rule should include a provision that states a judge

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
			discretion to make a temporary order and continue the matter to be heard by a commissioner? The preference would be to give the judge that discretion so that if a matter has a significant history before the commissioner, or further consideration is needed, the judge can make the temporary order and set the matter for further hearing before the commissioner.	maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption.
8.	Susan Ryan, Chief Deputy - Legal Services, Riverside Superior Court	A	Does the proposal appropriately address the stated purpose? Yes. Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner? Yes, to make clear that a judge retains such discretion. Would the proposal provide cost savings? Given that there are likely few IV-D hearings presided over by a judge, its doubtful that this would have much impact. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The size of the	No response required. The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption. No response required. No response required.

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

	Commenter	Position	Comment	Committee Response
			court would have no impact.	
9.	Los Angeles Superior Court	A	Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose. Should the proposed rule include a provision that states a judge has the discretion to make a temporary order and continue the matter to be heard by a commissioner? No, as that would replicate the process currently practiced at some courts to have the matter set in front of an IV-D commissioner, who would review the temporary order made by the judge. This is not a good use of court resources, or the parties' time. Would the proposal provide cost savings? If so please quantify. Yes, matters would not need to be set for duplicate hearings for the commissioner to review the order made by the judge. 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	No response required. The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption. No response required. No response required.

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
			systems, or modifying case management systems? Implementation requirements include training of Judicial Officers. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Three months would be sufficient for the court. Implementation time for the software developers is unknown.	No response required.
10	Hon. Rebecca Wightman, Superior Court of San Francisco County	AM	AGREE ONLY IF MODIFIED - I do not disagree generally with the need to modify the language in the existing rule for the reasons noted in the proposal, but the current proposed changes in the rule now *fail* to address at an important function the original language provided: to wit, to prevent incorrect orders from being made by a judicial officer, i.e. judge, who is inexperienced in the unique aspects of AB1058 proceedings. Further, the proposed directive language which now *requires* a judge to make an order, without more, could be misconstrued that it must be a substantive order. By providing options, and adding clarifying language, it can help alleviate the concerns noted. There are many laws and aspects of AB1058 proceedings which are unfamiliar	The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			to a judge, which can result in inadvertent incorrect orders being made. Such unfamiliarity can encompass jurisdictional matters (e.g. failing to recognize an original out of state registration or UIFSA matter as being limited in purpose, so no jurisdiction to modify), or involve different rules applicable in IV-D proceedings (e.g. seek work orders cannot be made against a party receiving cash public assistance), or simply making orders that are difficult to enforce (e.g. issuing off-sets to child support for variable monthly add-on expenses paid by the other parent). These are just a few of the many more situations and examples that exist. While the local child support agency may be able to point out some of these issues, the local agency often misses issues themselves, particularly the jurisdictional ones, and because they are a party to the case, it puts them in the awkward situation of trying to tell the judge what they can and cannot do. An alternative suggestion to address both the reasons noted in the proposal, as well as the problems that can occur when there is no direction whatsoever other than stating the obvious of "make an order" would be to keep the interim language but simply change the word "must" to "may" in 5.305(b), as well as clarifying that the judge	

	Commenter	Position	Comment	Committee Response
			can also issue an order and in either case reserve jurisdiction for a limited period of time (which would allow the parties or the court on its own to correct any problematic orders). (b) A judge hearing a title IV-D support action under this rule and Family Code sections 4251(a) and 4252(b)(7) must may make an interim order and refer the matter to the commissioner for further proceedings, or issue an order and reserve jurisdiction for a limited or reasonable period of time as appropriate. 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. I have decades of AB1058 experience and have discussed this issue with many other AB1058 colleagues over the years. I am certain I am not alone when I say that often times after someone has covered a calendar where they do not have the experience in Title IV-D proceeding, the orders emanating from that calendar are less than ideal and have caused problems – which could no longer be easily fixed if the proposed rule is not modified. The exact language or sequence of the suggested re-wording is not as important as addressing the concerns	

SPR19-30

Family Law: Duty of Judge Hearing Matter Per Family Code sections 4521(a), 4525(b)(7) (Amend Cal. Rules of Court, rule 5.305(b))

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

	Commenter	Position	Comment	Committee Response
			raised in this comment.	
11	Child Support Directors Association of California by Ronald Ladage, Chair, CSDA Judicial Council Forms Committee, Director/Chief Attorney, El Dorado County DCSS	AM	The Committee generally agrees with this proposal. We believe the proposal appropriately addresses its stated purpose; however, the Committee recommends modifying the Rule to allow for more judicial discretion as follows: Rule 5.305: A judge hearing a title IV-D support action under this rule and Family Code sections 4251 (a) and 4252(b)(7) must make either temporary or final orders. 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, or the court finds that in the interests of judicial economy, the continued proceedings regarding the temporary order(s) should be heard by the same judge. The Committee believes that the judge should have discretion to make temporary orders along with the discretion to hear the continued matter in the interests of judicial economy until final orders are made. Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	The committee discussed if the proposed rule should include a provision that states a judge maintains the discretion to make a temporary order and continue the matter to be heard by a commissioner when appropriate and recommends to include such a provision into the revisions that it is recommending for adoption.

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

Item number: 29

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Family Law: Registration of Support Order

Rules, Forms, Standards, or Statutes Affected
Adopt form FL-445; revise forms FL-570 and FL-575

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt a new Judicial Council form and revise two other Judicial Council forms for registration of support orders. These changes are required to make the forms suitable for use by all parties to the action and to correct inadvertent omissions.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Adopt *Request for Hearing Regarding Registration of California Support Order* (form FL-445); and

2. Revise *Notice of Registration of Out-of-State Support Order* (form FL-570) and *Request for Hearing Regarding Registration of Support Order* (form FL-575).

The new and revised forms are attached at pages 7–14.

Relevant Previous Council Action

The council adopted forms 1285.88 and 1285.90[1], effective January 1, 1999. The council revised both forms, effective January 1, 2017, to comply with modifications that were made to federal forms by the Office of Child Support Enforcement (OCSE) and due to modifications and renumbering of the Uniform Interstate Family Support Act.

Analysis/Rationale

The committee proposes the council adopt form FL-445 to request a hearing regarding the registration of a California support order. Additionally, the committee proposes the council revise forms FL-570 and FL-575 to replace references to federal child support forms with references that describe both the relevant federal forms or paperwork submitted by an individual and make other technical changes, and revise form FL-575 so that it may only be used 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 and 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; see Link A) 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, if the obligor has provided security for payment of the ordered support. (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.

[1] Effective January 1, 2003, these forms were renumbered to FL-570 and FL-575 respectively.

Additionally, the committee proposes revising form FL-575 to limit its use to contesting 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. A new defense was added as it was not previously included on the form, "there is another support order that is the controlling (correct) order." (Fam. Code, § 5700.607.) 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; see Link B.)

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; see Link C.) 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 refer 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 lower case, 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)* …"

Policy implications

By removing references on the Judicial Council forms to federal child support forms, making the forms suitable for use when an individual registers a support order, and by having one form to contest the registration of a California order and another form to contest the registration of an out-of-state order, the whole process of registering a support order would become more consistent and increase access to justice: courts would have a Judicial Council form available to give the notice required upon registration, and litigants would be made more aware what defenses are available to the type of registration particular to their case.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle, from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, and other family law professionals. The proposal also went to the Department of Child Support Services, the Child Support Directors Association of California's Legal Practices Committee chair, the Judicial Council Forms Subcommittee chair, and child support commissioners.

Seven organizations or individuals provided comment: all seven commenters agreed with the proposal, although four commentators suggested some slight modifications to the forms. A chart with the full text of the comments received and the committee's responses is attached at pages 15–26.

Two of the commenters suggested revising the item on form FL-445—requesting a stay of enforcement of the support order because the order has been appealed—to also indicate that security for the payment of the support ordered has been provided, which the committee proposes be included in the form. Two commenters stated that the term "documents and relevant information accompanying the order" found in the clerk's certificate of mailing section on form FL-570 is not clearly defined and could cause confusion; however, the committee recommends using this term as it is taken directly from the applicable statute. Two commenters suggested revising form FL-575 to include all of the defenses to contest the registration of an out-of-state support order listed in the statute, and the committee recommends revising the form accordingly. The committee also proposes including other formatting revisions proposed by some commenters to make the forms clearer and more consistent, such as having portions of the instruction sections of forms FL-445 and FL-575 mirror each other.

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 committee anticipates that this proposal will result in some initial costs to the courts to train judicial officers and court staff and would require courts to create copies of the new and updated forms but, because the forms are used on an as-needed 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. Finally, having two separate forms to contest the registration of a California or out-of-state support order would help eliminate confusion for litigants regarding which potential defenses apply to which type of registration.

Attachments and Links

1. Forms FL-445, FL-570, and FL-575, at pages 7–14
2. Chart of comments, at pages 15–26

3. Link A: Fam. Code, §§ 5600–5604, *https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=5.&chapter=8.&article=9*
4. Link B: 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*
5. Link C: 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 *(check all that apply)*:
   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.
   (NOTE: You can file this *Request* without stating what you believe is the correct amount of arrears.)
   d. ☐ Other *(specify):*

3. ☐ I request that enforcement of the support order be stayed (stopped) because the order has been appealed. I have furnished security for payment of the support ordered and the appeal is pending or the order has been stayed by another court.

4. 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, phone number, and e-mail address 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. Check this box if you do not want the support order to be registered. Then, check the box or boxes to tell the court the reasons why you do not want the support order to be registered.

   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. Tell the court the correct amount of arrears owed in the space provided (if known). 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 another reason to object to the registration of the support order and state your reason in the space provided.

3. Check this box if you want enforcement of the support order stayed (stopped) because you have appealed the order, you have furnished security for the support order, and the appeal is still pending or if the order has been stayed by another court to give you time to appeal the order.

4. You must fully explain all of the reasons that you checked in item 2 or 3 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 *(check all that apply)*:
   - 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. (NOTE: You can file this *Request* without stating what you believe is the correct amount of arrears.)
   - f. ☐ some or all of the arrears are not enforceable.
   - g. ☐ there is a defense under California law to the remedy sought.
   - h. ☐ there is another support order that is the controlling (correct) order. *(Attach a copy of the other order.)*
   - i. ☐ 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-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, 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).

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, phone number, and e-mail address 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. Check the box or boxes to tell the court the reasons why you do not want the support order to be registered.

   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. Tell the court the correct amount of arrears owed in the space provided (if known). If you attach any documents to support your position, check the applicable box.

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 there is a defense under California law to the remedy sought.

   h. Check this box if there is another support order involving the parties and children that is the controlling (correct) order. *(Attach a copy of the other order.)*

   i. Check this box if you have another reason to object to the registration of the support order and then specify the other reason.

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.

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.

SPR19-31

Family Law: Registration of Support Order

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Deidre Kelly, President	AM	The proposal appropriately addresses the stated purpose. **Specific Comments:** *Does Form FL-445 adequately set forth defenses?* Yes. *Does Form FL-575 adequately set forth defenses?* Yes, but the form appears to require a "letter of transmittal requesting registration" which is done for interstate enforcement through the Local Child Support Agency (in California, that's the Dept. of Child Support Services), but is NOT part of a private registration process. Confusion by litigants or court clerks could result in denial of registration when no "letter of transmittal requesting registration" can be provided. In addition, the form also refers to "documents and relevant information accompanying the order" without guidance or definition of what those items are.	No response required. Fam. Code § 5700.602(a) requires that "a letter of transmittal requesting registration and enforcement" be submitted, along with copies of the order, a statement of arrears and the name of the support obligor, regardless of if the request to register is from an LCSA or is a private request. In order for the court to give proper notice to the non-registering party "[t]he notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order." (Fam. Code, § 5700.605(a).) The committee discussed the suggestion to include a definition of "documents and relevant information" but does not recommend doing so as this term is taken directly from the statute.
2.	The Executive Committee of the Family Law Section of the California Lawyers Association	A	FLEXCOM agrees with this proposal.	No response required.

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

SPR19-31

Family Law: Registration of Support Order

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

	Commenter	Position	Comment	Committee Response
3.	Superior Court of San Diego County by Mike Roddy, Executive Director	AM	*Does the proposal appropriately address the stated purpose?* Yes. *Do forms FL-445 and FL-575 adequately set forth the defenses available to contest each type of registration of support order?* Yes. *Would the proposals 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.* Notifying staff, revising internal procedures, and updating/adding filings in case management system. *Would three months from Judicial Council approval of these proposals until their effective date provide sufficient time for implementation?* Yes. *How well would these proposals work in courts*	No response required. No response required. No response required. No response required. No response required.

	Commenter	Position	Comment	Committee Response
			of different sizes? It appears that the proposal would work for courts of all sizes. **GENERAL COMMENTS:** **FL-575 (Page 3, Paragraph 3)**: For consistency, the fourth sentence should be revised to mirror the instructions included on FL-445. "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)."	No response required. The committee agrees with the suggestion for the identified instruction language on form FL-575 to mirror the language on form FL-445 and has incorporated it into the revisions that it is recommending for adoption.
4.	Judy B. Louie, Director/Family Law Facilitator, ACCESS Center, Superior Court of San Francisco County	AM	Changing "attorney" to "lawyer" to make it more "plain English" doesn't make sense. Everyone knows what an attorney is. Registration of support order: proposed forms seem easier to use and understand.	With the large number of limited English proficient speakers in California, the committee does not agree with the suggestion to use the term "attorney" but to instead use the more commonly understood term "lawyer".
5.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	AM	**General Comments** Overall, the department likes the concept of separating out the CA from the foreign support orders. We believe it is a much clearer process; however, the department wishes to point out that individual may utilize federal forms for this process. **FL-445 (new)** 1) Page 1, item 2 c. The department understands a court's need to know	**FL-445** 1) The committee agrees with this suggestion and has incorporated it, with

	Commenter	Position	Comment	Committee Response
			obligor's position regarding arrearages, FC §5603 does not require an objector to specify what the correct amount of arrears are. 2) Page 1, item 2 d. Pursuant to FC §5603 (b) the court must make a finding regarding an appeal; it technically isn't a defense to registration like those listed in §5603(a), but instead will stay enforcement *only when obligor furnishes security for the support payment*. For this reason, JCC should either (1) remove this from the request; or (2) add information to inform the registering party that they will be required to bring evidence of the appeal to the hearing, that checking this box will not stop the registration, but only enforcement if ordered by the court and obligor posts security for the support. 3) Page 1, above the declaration under penalty of perjury. Add a box that says "____Additional pages attached" to denote any attachments and the number of pages. Since item 2c suggests that supporting documents are attached it may be helpful to know the number of pages that are supposed to be attached. 4) Page 2 Instructions for Numbered Paragraphs, item 2. This instruction should provide for the circumstance where an obligor objects on multiple items. It could read: "You must check	minor alterations, into the revisions that it is recommending for adoption, by indicating on the form that this information is not obligatory. 2) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by creating a new item 3 to request that the court stay enforcement of the order due to a pending appeal and that security for support has been furnished. 3) The committee discussed the suggestion to add a section regarding the number of pages attached but does not recommend its inclusion as it could cause confusion to the parties and the court if this item is referring to attached documents regarding arrears, an attached declaration, or both. 4) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by revising item 2 (and the corresponding

	Commenter	Position	Comment	Committee Response
			the box(es) by your reason(s)." 5) Page 3, item c. This instruction makes it mandatory to write in the correct arrears amount. As stated above, FC §5603 does not require this; although it would be helpful for the court to know the obligor's position. Suggestion: Make this an optional piece of the form rather than mandatory. It could say: "Write in the correct amount of arrears in the space provided, alternately, explain why you believe the amount of arrears stated in the statement for registration you received was wrong in item 3 of this form." 6) Page 3, item d. Either remove this from the form or explain to the objecting obligor that they must provide evidence at the hearing and it will not stop registration, but instead stay enforcement if the court makes the findings required and if obligor posts security for the support during the stay. **Form FL-570** Clerk's Certificate of Mailing: The term "and the documents and relevant information accompanying the order" is vague. Unless the clerk is sending all "documents and information accompanying the order" I could see a challenge later. FC 5700.602(5)(b) uses the term "documents	instructions_ to state, "check all that apply." 5) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by indicating on the form an in the instructions that this information is not obligatory. 6) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by creating a new item 3 to request that the court stay enforcement of the order due to a pending appeal and that security for support has been furnished. **FL-570** While Family Code section 5700.602(5)(b) uses the term "documents and information," section 5700.605(a) uses more general language: "[t]he notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order." The committee discussed the suggestion to include a

	Commenter	Position	Comment	Committee Response
			and information". I suggest that JCC use the term within the statute to avoid the concern that the clerk is determining what is "relevant", or alternatively have a place for the clerk to list the documents that were served with the accompanying order so that it is clear what the party(ies) received. **Form FL-575** 1) Page 1, item 2(e). The department understands a court's need to know obligor's position regarding arrearages, FC § 5700.606 does not require an objector to specify what the correct amount of arrears are. 2) The defenses listed did not include two set forth in FC § 5700.607 as follows: (7) Statute of Limitations; but this is not necessary as CA has an "until paid" statute. (8) the alleged controlling order is not the controlling order.I suggest adding an additional checkbox that says something like: [ ] There is another order involving the same parties and child(ren) that I believe is the correct order to enforce. (*Attach a copy of the order*) 3) Page 3, item 2(e). This instruction makes it mandatory to write in the correct arrears amount. As stated above, FC §5700.606 does not require this; although it would be helpful for the court to know the obligor's position.	space on the form for the court clerk to list out the documents sent to the nonregistering party the but does not recommend doing so as this change would increase the workload for the courts and the term "documents and relevant information" is taken directly from the statute. 1) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by indicating on the form that this information is not obligatory. 2) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by adding a new checkbox and item 3) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by indicating on the form an in the instructions that this information is not

	Commenter	Position	Comment	Committee Response
			Suggestion: Make this an optional piece of the form rather than mandatory. It could say: "Write in the correct amount of arrears in the space provided, alternately, explain why you believe the amount of arrears stated in the statement for registration you received was wrong in the "Other" box on this form." [Or add an explanation section like was proposed in FL-445] 4) If the controlling order defense is added on page 1, a corresponding instruction will be required on page 4. 5) Page 4, Instructions Box on right side: In some cases, the objecting party will not know if the LCSA is involved in the case. It may be likely that individuals will not provide a stamped envelope or provide the LCSA address. Most LCSAs have interoffice mail or a box that is utilized with their courts. Would it be possible to have a requirement that the court clerk place a copy of the registration in the LCSA interoffice mailbox/will call? **Request for Specific Comments** 1. Does the proposal appropriately address the stated purpose? Yes. 2. Do forms FL-455 and FL-575 adequately set forth the defenses available to contest each type of registration of support order?	obligatory. 4) The committee agrees with this suggestion and has incorporated it, with minor alterations, into form and instructions. 5) The committee does not recommend making the suggested change as not all court operations are identical across the state and the suggested change would create an increased workload for court staff on cases where the LCSA might not be involved. Additionally, assuming a case is properly identified in a court's case management system as having LCSA involvement, any hearing set because of the filing of form FL-575 would be set in on a IV-D calendar with LCSA attorneys present. No response required.

SPR19-31

Family Law: Registration of Support Order

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

	Commenter	Position	Comment	Committee Response
			FL-455 – Yes FL- 575 – No – suggestion to add one additional defense is above.	No response required. See above.
6.	Susan Ryan, Chief Deputy - Legal Services, Riverside Superior Court	AM	Does the proposal appropriately address the stated purpose? Yes. Do forms FL-445 and FL-575 adequately set forth the defenses available to contest each type of registration of support order? Yes. Would the proposal provide cost savings? No. What would the court's need to do to implement the proposed changes? The court would need to inform clerks and courtroom staff of the changes to the forms. The court would also need to create a new hearing code to distinguish between the "Request for Hearing Regarding Registration of California Support Order" vs "Request for Hearing Regarding Registration of Out-of-State Support Order". Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required. No response required. No response required. No response required. No response required.

	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? The size of the court would have no impact.	No response required.
7.	Ronald Ladage, Chair, CSDA, Judicial Council Forms Committee, Director/Chief Attorney, El Dorado County DCSS	A	The Committee agrees with the proposal to create a new request for hearings form regarding registrations of specifically California orders. The continued use of the FL-575 for this purpose will cause confusion and delay for many court customers with the references to Federal forms, paperwork and defenses that are not relevant when registering a California (not out-of-state) order. Separating the forms will provide more clarity to pro per litigants about the appropriate defenses to a registration of a California support order instead of the defenses only appropriate to the registration of an out-of-state support order. Generally, dual use forms may cause confusion for litigants, attorneys and judges. We believe it is best to separate out such forms for direct use in the correct relevant circumstance. Form FL-445 The Committee believes that the listed defenses to registration on the FL-445 comport with the defenses as set out in Family Code §5603. 1) However, the Committee believes that the obligor may request a stay of enforcement under Family Code §5603 subsection (b), thus, we recommend adding a new provision 4 to read as follows:	No response required. 1) The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by creating a new item 3 to request that the court stay

SPR19-31

Family Law: Registration of Support Order

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

	Commenter	Position	Comment	Committee Response
			Add 4. I request a stay of enforcement of the support order and will provide security for payment if the court grants my request. Explain the reasons for your request to stay enforcement: (See attached FL-445 draft Example)	enforcement of the order due to a pending appeal and that security for support has been furnished.
			2) Information Sheet FL-445 - The Committee recommends modifying the language as follows: In the second full paragraph, delete the second and third sentences. That instruction referring to other forms is unnecessary and confusing and should be eliminated. A similar change should be made to the Information Sheet on page 3 of 4 of form FL-575.	2) The committee prefers to leave the references to the other forms in the instructions section for forms FL-445 and FL-575, as any potential confusion to litigants is outweighed by informing the public of the proper form to contest each type of registration and providing hyperlinks to the other forms.
			3) Also, in the Instruction Sheet for form FL-445, in the middle of page 2 of 3, it directs the litigant to print their name, address, and phone number on the form. The Committee recommends that the instruction be modified to direct the litigant to also include their email address. This comment also applies to other Instruction Sheets (FL-575). (See attached FL-445 draft example)	3) The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption
			4) The committee also would like to point out that if the changes proposed are implemented, then the FL-650 (Statement for Registration of a California Support	4) The committee agrees that the suggested change would be beneficial to litigants and attorneys and will consider this suggestion during the next rules cycle, as form FL-650

	Commenter	Position	Comment	Committee Response
			Order) should also be modified to include reference to the new FL-445 form that is needed to request a hearing when the registration is objected to; similar to items 5 and 6 on the proposed FL-570. Adding these items to the FL-650 to notify litigants that if they want to request a hearing they can file the Request for Hearing Regarding Registration of California Support Order (FL-445) would provide consistency between the notices of registration (CA and out of state) as well as provide useful information to litigants and attorneys.	is not currently part of the present proposal.
			5) Form FL-570 - The Committee agrees with the proposed changes.	5) No response required.
			6) Form FL-575 - The Committee recommends modifying the language as follows: • Modify item f. to add "because (state reasons):" It would then read "f. Check box - some or all of the arrears are not enforceable because (state reasons): • Add items as follows: g. Check box - There is a defense under California law to the remedy sought. h. Check box - The registered order is not the controlling order. i. Other (specify): • The listed defenses in provision 2 do not	6) Form FL-575 • The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption, by including a new item 3 directing litigants to "explain the facts in support of your request," which would apply to any potential defense. • The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. • See above.

	Commenter	Position	Comment	Committee Response
			adequately address all of the defenses under Family Code §5700.607(a). Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.	

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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-278, 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):
Bonnie Rose Hough, 415-865-7668, bonnie.hough@jud.ca.gov
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 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Family Law: Changes to Parentage Rules and Forms

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

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 20, 2019

Contact
Bonnie Rose Hough, 415-865-7668
bonnie.hough@jud.ca.gov
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending rules 5.350 and 5.635 of the California Rules of Court, 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 inclusive when possible.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rules 5.350 and 5.635 of the California Rules of Court 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)."
6. Revise the following forms to include gender-inclusive references to the parties and children or to make the interpreter's declaration gender inclusive: 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.
8. Revise form FL-615 to remove references to relief currently available to child support obligors under Family Code section 4007.5, which will sunset effective January 1, 2020.

Relevant Previous Council Action

The council adopted rule 5.350 effective July 1, 2000, and rule 5.635 effective July 1, 1995; both of these rules were subsequently renumbered and amended. The council adopted the following forms as follows:

- FL-600 and FL-610 effective January 1, 1997[1];
- FL-100, FL-120, FL-170, FL-200, FL-220, FL-230, FL-235, FL-250, FL-260, and FL-270 effective January 1, 1999[1];
- FL-694 effective January 1, 2003;
- FL-272, FL-273, FL-274, FL-276, FL-278, FL-280, FL-281, FL-285, and FL-290 effective January 1, 2006;
- FL-686 effective January 1, 2014; and
- FL-300-INFO effective January 1, 2016.

The rules have been amended and most of the forms have been revised multiple times over the years, although none of those modifications pertain directly to the current proposal.

Analysis/Rationale

Changes based on Assembly Bill 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)";

[1] Effective January 1, 2003, these forms were renumbered to their current form number.

- 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.

Assembly Bill 2684 (see Link A) 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.[2]

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 the council revise 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 the council revise 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.

Family Code section 4007.5 sunsetting

The committee proposes the council revise form FL-615 to remove references to relief currently available to child support obligors under Family Code section 4007.5, which will sunset effective January 1, 2020. Legislation that would have removed the sunset date and made this section permanent unexpectedly lost support and is now inactive; meaning this section will repeal effective January 1, 2020. Twelve other forms that will be affected by the repeal of this statute are contained in a separate proposal to be revised as a technical change.[3]

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

[2] Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2684 (2017–2018 Reg. Sess.) as amended Aug. 24, 2018, p. 2.

[3] Judicial Council of Cal., *Rules and Forms: Technical Changes Required by Sunsetting of Family Code section 4007.5.*

the layout of forms and using more plain language. With this goal in mind, the committee proposes the council revise 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 the council revise 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 would be 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) would be 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).)

As detailed below, the committee discussed the treatment of voluntary declarations filed before January 1, 2020, once the new set-aside rules become effective on that date. Specifically, the

committee reviewed the issue of whether the new set-aside rules apply to these existing declarations, or will the old set-aside rules still apply? The committee acknowledged the difficulty of this question, but in the end reached the conclusion that the old set-aside rules should continue to apply to declarations filed before January 1, 2020.

In reaching this conclusion, the committee acknowledged that there are exceptions to the general rule set forth in Family Code section 4(c) that a new law applies immediately to all matters upon its effective date. Specifically, orders are governed by the law applicable when the order was made. (Fam. Code, § 4(e).) The committee noted that under California law, a voluntary declaration of parentage or paternity has the "same force and effect as a judgment for paternity"[4] or is "equivalent to a judgment of parentage."[5] And if the voluntary declaration is to be treated the same as a judgment, then its validity should be governed by the applicable law in place when it was signed and filed with DCSS.

Based on this assumption, 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 does not recommend creating forms to specifically address the grounds for relief and time limits for each separate class of filer, as this 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.*" Additionally, in the instructions to these request forms (FL-274 and FL-281), the following additional warning language was added to inform the filer of the change in law:

> ***Note:*** *Effective January 1, 2020, the law regarding canceling (setting aside) voluntary declarations of parentage or paternity changed. If the declaration was filed after that date, the people that signed the declaration may only request that it be canceled because of fraud, duress, or material mistake of fact. If you did not*

[4] Fam. Code, § 7573(a).

[5] Fam. Code, § 7573(d), as amended by Stats. 2018, ch. 876.

sign the declaration or if it was filed before January 1, 2020, there may be other reasons to request the court cancel the declaration.

Amendments to rules 5.350 and 5.635

The committee proposes the council amend 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 the council amend 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 the council take 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" would been removed (e.g., item 12 on form FL-170), as would be 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 (form FL-600) or answer (form FL-610) since the adoption of those forms in 1997.

The committee sought specific comment about the proposal to change form FL-200, item 1b, and form FL-220, item 2b, as set forth below. 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 the council change 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 would 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): …*" Most commenters responded to this as a question of phrasing. No one disagreed with providing the opportunity for petitioners to allow participants to state why they wanted to be determined to be the parent.

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 inclusive, the rules for setting aside a judgment of parentage still use such terms as "previously established father," "previously established mother," "alleged father," "biological father," and "genetic father." (See Fam. Code, §§ 7645–7649.5.) Therefore, these terms were not entirely removed from all of the revised forms, such as form FL-273.

Other changes

The committee proposes the council make 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)."
- 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, FL-260, and FL-270 would be revised to reorganize the presentation of the information to make the forms easier to complete.

Policy implications

By removing references on the Judicial Council forms to federal child support forms, making the forms suitable for use when an individual registers a support order, and by having one form to

contest the registration of a California order and another form to contest the registration of an out-of-state order, the whole process of registering a support order would become more consistent and increase access to justice: courts would have a Judicial Council form available to give the notice required upon registration, and litigants would be made more aware of what defenses are available to the type of registration particular to their case.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle, from April 12 to June 10, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, and other family law professionals. The proposal also went to the Department of Child Support Services, the Child Support Directors Association of California's Legal Practices Committee chair, the Judicial Council Forms Subcommittee chair, and child support commissioners.

In total, 12 different organizations or individuals submitted comments. Many commenters made thoughtful suggestions to the forms, primarily correcting typographical errors and simplifying language. There are three policy matters the committee considered.

Commenters were asked whether parties should be **required** to provide a voluntary declaration of parentage with their initial pleadings. Currently, that is optional with forms FL-100 and FL-120, FL-200 and FL-220, and FL-260 and FL-270. Five commenters weighed in on the issue: three (the Superior Court of Los Angeles County, the Orange County Bar Association, and the California Department of Child Support Services) recommended that it not be a requirement and two commenters (the Superior Courts of San Diego and Riverside Counties) recommended that it be required, although Riverside's comment suggests that it may not be necessary if a *Declaration Under UCCJEA* (form FL-105) is attached.

In its comment, the Superior Court of Los Angeles County noted that, "Judicial officers generally do not ask to see this. Parties frequently do not have a copy. If the other party wants to challenge that one was signed, then it could be ordered produced, and the burden would fall on the parties to produce the evidence." The Orange County Bar Association recommended that the forms not require that the declaration of parentage be attached "since most parents tend not to keep that form and instead keep the Birth Certificate. The 'POP Dec' ('Parental Opportunity Program Declaration') is retained by Dept. of Social Services if needed." The California Department of Social Services noted that, "Requiring the declaration prior to the Petition may delay filings while the Petitioner seeks to obtain a copy (and if it is from out of state it may be a significant delay). Some states such as Nevada have statutes that severely restrict access to the document. In these cases, requiring the form may prevent a participant from filing.

The San Diego court recommended that parties be required to attach the declarations of parentage to the initiating pleadings. They note that, "It may be helpful to add language in this

section indicating that the social security numbers on the [voluntary declaration of parentage or paternity] should be redacted before it is attached." The Riverside court suggested that it should be required for forms FL-200 and FL-220. However, it suggested that it not be required for forms FL-260 and FL-270 because parties are required to attach form FL-105, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*, for those forms. Since FL-105 is required for each of the forms in question, it appears that Riverside might be willing to accept the FL-105 instead of the voluntary declaration of parentage or paternity.

After consideration, the committee determined that for forms FL-100, FL-110, FL-200 and FL 220, that the voluntary declaration should be strongly encouraged, but not required. It proposes using the language of the domestic violence forms which say "attach a copy if available." However, since the basis for jurisdiction in the FL-260 and FL-270 is that an official *Voluntary Declaration of Parentage* or *Voluntary Declaration of Paternity* has been signed and submitted to the Department of Child Support Services, the committee recommends that the form be mandatory for those cases. This prevents a party from mistakenly filing a case for custody and support only if parentage has not been legally determined. If the form is not available, the petitioner can instead file an FL-200 *Petition to Determine Parentage* to obtain orders for custody and support.

The invitation to comment also asked if forms FL-273 and FL-280 correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity. In reply to this question, three commenters replied "yes," and two replied "no," stating that the new law as amended effective January 1, 2020, should apply to all voluntary declarations of parentage or paternity, whether they were filed before or after the new law takes effect. Specifically, DCSS cited Family Code section 4(c) and stated the "new law applies 'to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date [citation omitted].'" The Child Support Directors Association's Judicial Council Forms Subcommittee also weighed in on the issue, commenting that once the new set-aside rules take effect on January 1, 2020, it is uncertain if the new law or old law should apply to voluntary declarations filed prior to January 1, 2020.

In response, the advisory committee carefully considered the issue and for the reasons detailed above, propose the forms continue to list the set-aside relief available under the old law, while acknowledging that the law will change effective January 1, 2020.

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, to enable the committee to obtain suggestions for alternative language and 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.

Attachments and Links

1. Cal. Rules of Court, rules 5.350 and 5.635, at pages 13–14
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 15–76
3. Chart of comments, at pages 77–204
4. Link A: Assembly Bill 2684 (Bloom; Stats. 2018, ch. 876), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2684*

Rule 5.350. Procedures for hearings to cancel (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 cancel (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 canceled (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 canceled (set aside) must serve, either by personal service or by mail, a copy of 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 parentage or 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 canceled (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 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** **v6. 081619 xyz**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PETITION FOR ☐ **AMENDED** ☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER:

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, unless you are in the legal relationship described in 1b., at least one of you 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. *(Attach a copy if available.)*

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 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** **v7. 081619 xyz**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
RESPONSE ☐ **AND REQUEST FOR** ☐ **AMENDED** ☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER:

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, unless you are in the legal relationship described in 1b., at least one of you 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. *(Attach a copy if available.)*

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 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** **v8 082019 xyz**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
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 to do so.
3. All the information in the ☐ amended ☐ Petition ☐ Response 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 partnership rights, 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 partnership rights, 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 parties 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* (form FL-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 done 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]

DECLARATION FOR DEFAULT OR UNCONTESTED DISSOLUTION OR LEGAL SEPARATION
(Family Law)

Family Code, § 2336
www.courts.ca.gov

PETITIONER: RESPONDENT:	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 in 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 the current schedule is *(specify)*:

      ☐ Contained on Attachment 6c.
   d. ☐ The facts that support the requested judgment are (*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:	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):*
      ☐ The written agreement of the parties regarding parentage is attached here (Attachment 9b) or to the proposed *Judgment* (form FL-180).
10. ☐ **Attorney fees** should be ordered as set forth in the proposed *Judgment* (form FL-180).
   ☐ The facts in support of this request are on *Request for Attorney's Fees and Costs Attachment* (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 the former name as set forth in the proposed *Judgment* (form FL-180) *(proceedings for dissolution or nullity of marriage only).*

13. Irreconcilable differences 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 a marriage or domestic partnership created in another state, the petitioner or the respondent has been a resident 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 of 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 of 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:	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** **v8. 073119 xyz**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PETITION TO DETERMINE PARENTAL RELATIONSHIP	CASE NUMBER:

1. The petitioner
   a. ☐ gave birth to the children listed in item 2.
   b. ☐ wants to be determined as a parent of the children in item 2 because *(specify):*
   c. ☐ wants to be determined as not a parent of the children listed in item 2 because *(specify):*
   d. ☐ is the child or the child's personal representative *(specify court and date of appointment):*
   e. ☐ 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. ☐ lives 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 children live or are found in this 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 parent of the children listed in item 2 above.
   b. ☐ parentage has been determined by a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*
   c. ☐ respondent is the children's parent and has failed to support the children.
   d. ☐ *(name):* has furnished or is furnishing the following reasonable expenses of pregnancy and birth for which the respondent as parent of the children should pay:
      Amount | Payable to | For *(specify):*

   e. ☐ public assistance is being provided to the children.
   f. ☐ 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]

PETITION TO DETERMINE PARENTAL RELATIONSHIP
(Uniform Parentage)

Family Code, § 7630
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Petitioner asks the court to make the determinations indicated below.

7. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.
   b. ☐ Petitioner ☐ Respondent is not the parent of the children listed in item 2.
   c. ☐ Petitioner requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.

8. CHILD CUSTODY AND VISITATION (PARENTING TIME)
   a. If ☐ Petitioner ☐ Respondent is found to be the parent of the children listed in item 2.

	Petitioner	Respondent	Joint	Other
b. Legal custody of children to	☐	☐	☐	☐
c. Physical custody of children to	☐	☐	☐	☐
d. 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)

   e. The facts in support of the requested custody and visitation (parenting time) orders are *(specify):*
   ☐ Contained in the attached declaration.

9. REASONABLE EXPENSES OF PREGNANCY AND BIRTH

	Petitioner	Respondent	Joint
Reasonable expenses of pregnancy and birth to be paid by as follows:	☐	☐	☐

10. FEES AND COSTS OF LITIGATION

	Petitioner	Respondent	Joint
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 old and new names):*

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. ☐ OTHER ORDERS REQUESTED *(specify):*

14. 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:	**v9. 081619 xyz**
PETITIONER: RESPONDENT:	
RESPONSE TO PETITION TO DETERMINE PARENTAL RELATIONSHIP	CASE NUMBER:

1. The petitioner
   a. ☐ is a parent of the children in item 2.
   b. ☐ is not a parent of the children in item 2.
   c. ☐ is 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 respondent
   a. ☐ lives in the state of California.
   b. ☐ was in California when the children listed in item 2 were conceived.
   c. ☐ does not live in the state of California.
   d. ☐ was not in California when the children listed in item 2 were conceived.
   e. ☐ Other *(specify):*

4. The children
   a. ☐ live or are found in this county.
   b. ☐ are children of a parent who is deceased, and proceedings for administration of the estate have been or could be started in this county.

5. The respondent is
   a. ☐ the parent of the children listed in item 2 above.
   b. ☐ not certain if the respondent is the parent of the children listed in item 2 above.
   c. ☐ not the parent of the children listed in item 2 above.
   d. ☐ Other *(specify):*

6. Additional statements
   a. ☐ Parentage has been determined by a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*
   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.

Form Approved for Optional Use
Judicial Council of California
FL-220 [Rev. January 1, 2020]

PETITIONER: RESPONDENT:	CASE NUMBER:

The respondent asks that the court make the determinations listed below.

8. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Respondent ☐ Petitioner is the parent of the children listed in item 2.
   b. ☐ Respondent ☐ Petitioner is not the parent of the children listed in item 2.
   c. ☐ Respondent requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.

9. 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)

   d. The facts in support of the requested custody and visitation (parenting time) orders are *(specify):*
   ☐ Contained in the attached declaration.

10. REASONABLE EXPENSES OF PREGNANCY AND BIRTH:

	Petitioner	Respondent	Joint
Reasonable expenses of pregnancy and birth to be paid by as follows:	☐	☐	☐

11. FEES AND COSTS OF LITIGATION

	Petitioner	Respondent	Joint
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.

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)

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:		DRAFT
FIRM NAME:		
STREET ADDRESS:		NOT APPROVED BY THE JUDICIAL COUNCIL
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		v11. 081619 xyz
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 to Determine Parental Relationship* ☐ *Response* ☐ *Petition for Custody and Support of Minor Children* ☐ *Response* is true and correct.
4. ☐ Respondent and/or ☐ Petitioner is/are the parent(s) of the minor children.
5. A voluntary declaration of parentage or paternity form ☐ has ☐ has not been signed regarding these children *(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 ☐ Respondent 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: Determination 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

v7. 082019 xyz

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 voluntary 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: Determination 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 voluntary declaration of parentage or paternity.
      (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:
   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) ☐ *Child Custody and Visitation Order Attachment* (form FL-341)
      (2) ☐ *Stipulation and Order for 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 attached *Attorney's Fees and Costs Order Attachment* (form FL-346).
   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: 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** **v9. 081619 xyz**
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 domestic partnership and will not determine a parental relationship.

1. I am the petitioner. The respondent and I are the parents of the following minor children:

Child's name	Birthdate	Age

☐ continued on Attachment 1.

2. Choose at least one box below to explain why 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 voluntary declaration of parentage or paternity regarding the minor children, and no action regarding the children has been filed in any other court. A copy is attached.
   c. ☐ Respondent and I have legally adopted a child together.
   d. ☐ Respondent and I have been determined to be the parents in juvenile court 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:	☐	☐		☐

   d. If "Other" is checked above, name of the other person is *(specify):*

   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. e. ☐ I request that the child abduction prevention orders requested on form FL-312 be approved.
   f. ☐ I request that the proposed holiday schedule set out in ☐ form FL-341(C) ☐ other be approved.
   g. ☐ I request that additional orders regarding child custody set out in ☐ form FL-341(D) ☐ other be approved.
   h. ☐ I request that joint legal custody orders set out in ☐ form FL-341(E) ☐ other be approved.
   i. ☐ I request that visitation (parenting time) be supervised for the following persons, with the following restrictions:

   ☐ Continued on Attachment 4h.
   j. ☐ Other *(specify):*

5. **Fees and cost of litigation**
   a. Attorney fees will be paid by ☐ petitioner ☐ respondent.
   b. ☐ Each party will pay their own attorney's 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 a copy of 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:		DRAFT
FIRM NAME:		NOT APPROVED BY THE JUDICIAL COUNCIL
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:		v9. 082019 xyz
RESPONDENT:		
RESPONSE TO PETITION FOR CUSTODY AND SUPPORT OF MINOR CHILDREN		CASE NUMBER:

NOTICE: This action will not terminate a marriage or domestic partnership and will not determine a parental relationship.

1. I am the respondent. The petitioner and I are the parents of the following minor children:

Child's name	Birthdate	Age

☐ continued on Attachment 1.

2. Choose at least one box below to explain why 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 voluntary declaration of parentage or paternity regarding the minor children, and no action regarding the children has been filed in any other court. A copy is attached.
   c. ☐ Petitioner and I have legally adopted a child together.
   d. ☐ Petitioner and I have been determined to be the parents in juvenile court 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:	☐	☐		☐

   d. If "Other" is checked above, name of the other person is *(specify):*

   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. e. ☐ I request that the child abduction prevention orders requested on form FL-312 be approved.
   f. ☐ I request that the proposed holiday schedule set out in ☐ form FL-341(C) ☐ other be approved.
   g. ☐ I request that additional orders regarding child custody set out in ☐ form FL-341(D) ☐ other be approved.
   h. ☐ I request that joint legal custody orders set out in ☐ form FL-341(E) ☐ other be approved.
   i. ☐ I request that visitation (parenting time) be supervised with the following persons, with the following restrictions:

   ☐ Continued on Attachment 4h.
   j. ☐ Other *(specify):*

5. **Fees and cost of litigation**
   a. Attorney fees will be paid by ☐ petitioner ☐ respondent.
   b. ☐ Each party will pay their own attorney's 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 RESPONDENT)

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 and you must file the proof of service with the court. 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 form 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, §§ 7576, 7577, 7646
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, any 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 in Family Code section 7540 does not apply. *(The marital presumption means a child is legally considered to be a child of the marriage if the parents were married and living together as spouses at the time of conception and birth.)*

11. ☐ I request that the court appoint a guardian ad litem for each child listed in item 6. *(A guardian ad litem is an adult appointed by the court who advocates or speaks on behalf 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 primary 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 parent is not the genetic parent 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]

Family Code, §§ 7576, 7577, 7646
www.courts.ca.gov

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 parent 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 parent 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. ☐ The voluntary declaration of parentage or paternity should be canceled (set aside) 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 into signing the declaration.)

      (3) ☐ Material mistake of fact (I thought the facts were different from what they really are.)

      The following reasons apply only to voluntary declarations filed before January 1, 2020 ***or*** *if you did not sign the declaration.*

      (4) ☐ My mistake, inadvertence, surprise, or excusable neglect

      (5) ☐ Other *(specify):*

   d. ☐ The voluntary declaration of parentage or paternity is void (invalid) because *(specify):*

   e. 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)

INFORMATION SHEET FOR COMPLETING NOTICE OF MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE (FORMS FL-272 AND FL-273)

NOTICE: IF A COURT ORDERED YOU TO PAY CHILD SUPPORT, 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 parent is determined by genetic testing not to be the genetic parent 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: (1) a previously established parent, mother, or father; (2) a genetic mother; (3) a presumed parent or an alleged genetic parent who is not a donor; (4) a child; or (5) a legal representative of any of the above persons.

Your request must be filed within the time frame that applies to you:

(1) Within a two-year period starting on the date:

(a) when the previously established parent knew or should have known of a judgment that determined him or her to be the parent of the child (for example, the date a wage garnishment was served), or

(b) when the previously established parent knew or should have known of an action to determine parentage had been filed (for example, the date of service of a summons),

whichever is first, except as provided in paragraphs (2)–(5) below, if parentage was established by a voluntary declaration of parentage or paternity.

(2) **For all declarations filed before January 1, 2020:**
(1) Before the child's second birthday, **or** (2) within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

(3) **For declarations filed on or after January 1, 2020, that you did NOT sign:**
(1) Within two years of the effective date* of the declaration, **or** (2) within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

(4) **For declarations filed on or after January 1, 2020, that you did sign:**
(1) Within two years of the effective date* of the declaration.

(*If both parents were 18 years or older when they signed the declaration, the effective date is when the declaration was filed with the Department of Child Support Services.)

(5) There are **no deadlines** to assert that the declaration was void (invalid) when it was signed under Family Code section 7573.5.

Note: *Effective* ***January 1, 2020,*** *the law regarding canceling (setting aside) voluntary declarations of parentage or paternity changed. If the declaration was filed on or after that date, the people who signed the declaration may only request that it be canceled because of* ***fraud, duress, or material mistake of fact****. If you did not sign the declaration or if it was filed before* ***January 1, 2020****, there may be other reasons to request that the court cancel the declaration.*

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 a child is legally considered to be a child of the marriage if the parents were married and living together as spouses at the time of conception and birth.)

Form Adopted for Optional Use
Judicial Council of California
FL-274 [Rev. January 1, 2020]

Family Code, §§ 7577, 7576, 7646
www.courts.ca.gov

There is a voluntary declaration of parentage or paternity and there is no basis to cancel (set aside) the voluntary declaration.

There is another California judgment of parentage in a different case for the same previously established parent 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 testing that was done before the judgment and that indicated the previously established parent is the genetic parent 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.

A copy of 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:

Any previously established parent, mother, or father;
Any presumed or intended parent or any person alleging to be a genetic parent;
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 your 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 parent is not the genetic parent 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 parent is found not to be the genetic parent 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 parent has no right to reimbursement of any child support paid before the motion was granted.

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 419070-MS 241
Rancho Cordova, CA 95741-9070
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*):		
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:

DRAFT
Not approved by the Judicial Council

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 and you must file the proof of service with the court. 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 provided in the motion (item 6 of form FL-272):
   a. ☐ I agree with the information provided about the judgment of parentage.
   b. ☐ I do not agree with the information provided 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 because *(specify why you do not agree):*

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 advocates or speaks on behalf 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):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-276 [Rev. January 1, 2020]

Family Code, §§ 7576, 7577, 7646
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

6. ☐ The request is not proper because *(specify):*

7. The facts in support of this response 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 together 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 parent 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 parent is the genetic parent 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 RESPONDING TO 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 it is providing services for the children in this case, and any alleged or presumed parent who was served with form FL-272. See *Information Sheet for Service of Process* (form FL-611) for more information about completing a proof of service.

PROOF OF SERVICE

1. When I served this response, 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) Place of mailing *(city and state):*

☐ (2) Name of local child support agency served:

(a) Address:

(b) Date of mailing:

(c) 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 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, the previously established parents are *(names):*
   a.
   b.
   c.

THE COURT FINDS

3. The following facts exist regarding the previously established parents and the children listed below:

	Name of child	Date of birth	Genetic Father	Parentage Judgment	Filed 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]

ORDER AFTER HEARING ON MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE
(Family Law—Governmental)

Family Code, §§ 7576, 7577, 7646
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

4. ☐ The court finds the voluntary declaration of parentage or paternity is void (invalid) for the following children *(specify):*

5. Other *(specify):*

THE COURT ORDERS

6. 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 Canceled (Set Aside)	Voluntary Declaration of Parentage or Paternity Canceled (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 parent 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):*

7. For the children named in item 6k, 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 parent and the child, including the duration and frequency of any time periods during which the child and the previously established parent resided in the same household or enjoyed a parent-child relationship *(specify):*

d. ☐ The fact that the previously established parent has requested that the parent-child relationship continue.

e. ☐ The fact that the genetic parent of the child does not oppose preservation of the relationship between the previously established parent and the child.

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

8. f. ☐ The fact that there would be a detriment to the child if the genetic parent were established as the parent *(explain):*

g. ☐ The fact that the previously established parent has hindered the ability to discover the identity of, or get support from, the genetic parent *(specify):*

h. ☐ Other factors concerning the best interest of the child *(specify):*

9. ☐ If the voluntary declaration of parentage or paternity is canceled (set aside), or makes a finding that the voluntary declaration is void (invalid), the court clerk must send a copy of this order to the California Department of Child Support Services: **DCSS-POP Unit, P.O. Box 419070-MS 241, Rancho Cordova, CA 95741-9070**.

10. ☐ The court further orders *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT 2 Not approved by the Judicial Council**
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 and you must file the proof of service with the court. 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, §§ 7573.5, 7576, 7577; Code of Civil Procedure, § 473
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

6. I request that the court:
   a. ☐ order genetic testing and cancel (set aside) the voluntary declaration of parentage or paternity.
   b. ☐ make a finding that the voluntary declaration of parentage or paternity is void (invalid).

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. ☐ The voluntary declaration of parentage or paternity should be canceled (set aside) 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 into signing the declaration.)
       (3) ☐ Material mistake of fact (I thought the facts were different from what they really are.)

       The following reasons apply only to voluntary declarations filed before January 1, 2020, ***or*** *if you did not sign the declaration.*

       (4) ☐ My mistake, inadvertence, surprise, or excusable neglect
       (5) ☐ Other *(specify):*
    b. ☐ The voluntary declaration of parentage or paternity is void (invalid) because *(specify):*
    c. 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, ask the court clerk for forms to apply for a waiver of court fees. If you need help 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 of the completed request 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.

Form Approved for Optional Use
Judicial Council of California
FL-281 [Rev. January 1, 2020]

Family Code, §§ 7573.5, 7576, 7577;
Code of Civil Procedure, § 473
www.courts.ca.gov

Instructions for Numbered Paragraphs

Page 1

Item 1. The court clerk will fill in the date, time, department, or court address for setting a court hearing.

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 an earlier court date. If you need help with requesting an earlier court date, contact the family law facilitator in your county or go to ***www.courts.ca.gov/selfhelp***.

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.

Item 6.

a. Check this box if you want the court to order genetic testing and cancel (set aside) the voluntary declaration.

b. Check this box if you want the court to find the voluntary declaration is void (invalid).

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)*.

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.

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. (**Note:** this form is only to request the voluntary declaration be canceled (set aside); to request that a judgment of parentage be canceled (set aside), you must file a *Notice of Motion to Cancel (Set Aside) Judgment of Parentage* (**form FL-272**).)

Note: *Effective* ***January 1, 2020****, the law regarding canceling (setting aside) voluntary declarations of parentage or paternity changed. If the declaration was filed on or after that date, the people who signed the declaration may only request that it be canceled because of* ***fraud, duress, or material mistake of fact****. If you did not sign the declaration or if it was filed before* ***January 1, 2020****, there may be other reasons to request that the court cancel the declaration.*

Item 10a. Check this box if you believe the voluntary declaration of parentage or paternity should be canceled (set aside), and then check the box or boxes to tell the court the reasons why.

(1) Check this box if you were a victim of fraud, which means someone lied to you and kept you in ignorance of the true facts when you signed the voluntary declaration.

(2) Check this box if you were under duress, which means you were threatened or mentally coerced into signing the voluntary declaration.

(3) Check this box if you made a material mistake of fact, which means you thought that the facts were different from what they really are or were when you signed the voluntary declaration.

*The following reasons apply only to voluntary declarations filed before **January 1, 2020**, or if you did not sign the declaration.*

(4) Check this box if any of the following statements describes what happened at the time you signed, were unable to sign, or failed to sign the voluntary declaration of parentage or paternity:

- You misunderstood the facts;
- You ignored what would happen if you signed or failed to sign 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 to sign or failing to sign the voluntary declaration of parentage or paternity, and you could not have avoided this with reasonable care and good sense; or
- You were unable to or failed to sign the voluntary declaration of parentage or paternity because of your neglect, and you could not have avoided this by using reasonable care and good sense.

(5) 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.

Item 10b. Check this box if you believe the voluntary declaration is void (invalid) under Family Code section 7573.5, and tell the court the reason why in the space provided.

Item 10c. You must fully explain all of the reasons that you checked in item 10a or 10b of the 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 despite the delay. If you need more space, you may attach additional sheets and check the box next to "Contained in the attached declaration."

Your request must be filed within the time frame that applies to you:

- **For all declarations filed before January 1, 2020:**
  (1) Before the child's second birthday, **or** (2) within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

- **For declarations filed on or after January 1, 2020, that you did NOT sign:**
  (1) Within two years of the effective date* of the declaration, **or** (2) within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.

- **For declarations filed on or after January 1, 2020, that you did sign:**
  (1) Within two years of the effective date* of the declaration.

  (*If both parents were 18 years or older when they signed the declaration, the effective date is when the declaration was filed with the Department of Child Support Services.)

- There are **no deadlines** to assert that the declaration was void (invalid) when it was signed.

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 more help 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		
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:

DRAFT
Not approved by the Judicial Council

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 and you must file the proof of service with the court. 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 (item 7 of FL-280):
   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 to cancel (set aside) voluntary declaration of parentage or paternity and order genetic testing, or request to make a finding the voluntary declaration is void (invalid):
   a. ☐ I agree to cancel (set aside) the voluntary declaration of parentage or paternity and submit to genetic testing, or agree that the voluntary declaration is void (invalid).
   b. ☐ I do not agree to cancel (set aside) the voluntary declaration of parentage or paternity and submit to genetic testing, or agree that the voluntary declaration is void (invalid).
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 RESPONDING TO REQUEST)

Form Adopted for Mandatory Use
Judicial Council of California
FL-285 [Rev. January 1, 2020]

RESPONSIVE DECLARATION TO APPLICATION TO CANCEL (SET ASIDE) VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY

Fam. Code, §§ 7573.5, 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 page 1 of this form. If you do have a lawyer representing you, your lawyer should complete the form. If you are receiving services from the local child support agency, you should contact it right away.

After you complete page 1 of this form, you must file the form and any attachments with the court clerk at least 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 that form. **If you need help completing this form, see a family law facilitator. Provide an original of this form plus three copies for filing. Use the three copies of the filed responsive declaration for service of process. 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* form 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, telephone number, and e-mail address in this box.

Second box, left side. Print the same address for the court that is on form FL-280.

Third box, left side. Print the names of the petitioner and respondent in this box. Use the same names listed on 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 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, or if you do not agree that the voluntary declaration is void (invalid).

3. You must fully explain either the reasons you either agree or disagree with the requests made in form FL-280. 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 more help 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 canceled (set aside) b. ☐ is void (invalid) on the following grounds *(specify):*
   c. ☐ is not canceled (set aside) d. ☐ is not void (invalid)

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), or makes a finding that the voluntary declaration is void (invalid), the court clerk must send a copy of this order to the California Department of Child Support Services:
   DCSS-POP Unit, P.O. Box 419070-MS 241, Rancho Cordova, CA 95741-9070.

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*, talk to 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:
- ☐ 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:
- ☐ 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 Attachment* (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:
- ☐ FL-321, *Witness List*

h. If you want to request a separate trial (bifurcation) on an issue, you need:
- ☐ FL-315, *Request or Response to Request for Separate Trial*

4 Complete form FL-300 (Page 1)

Caption: In the top box, print or type your name, address, telephone number, and email address if you have one. In the second box, put the court address. In the third box, write the name of the Petitioner, Respondent, and Other Parent/Party (if there is one). (You must use the party names as they appear in the petition that was originally filed with the court).

In the fourth box, check "CHANGE" if you want to change an existing order. Check "TEMPORARY EMERGENCY ORDERS" if you are asking the court to make emergency orders that will be effective until the hearing date. Then, check all the boxes that apply to the orders you are requesting. In the box on the right, write the case number.

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.

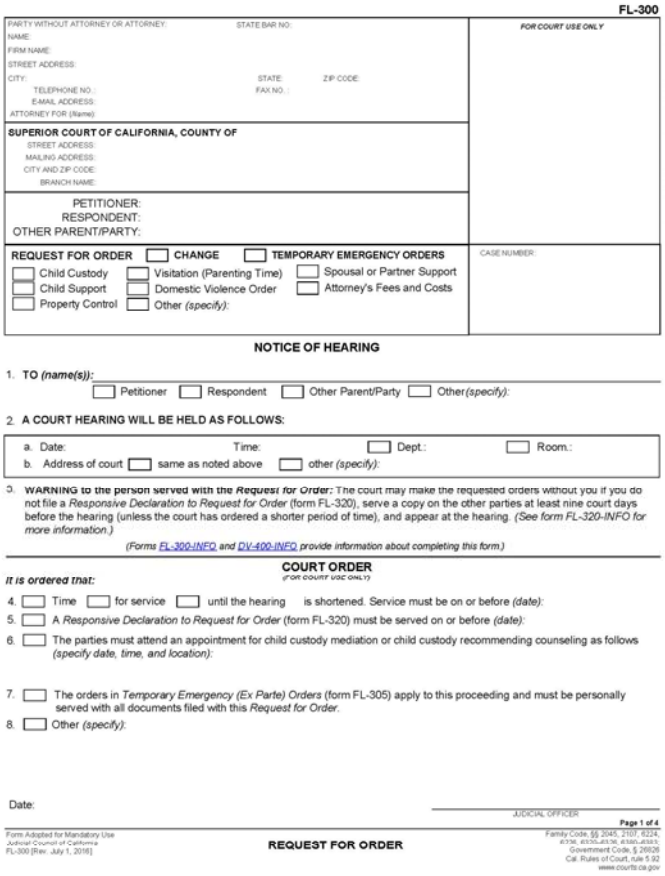
Item 2: Leave this blank. The court clerk will fill in the date, time, and place of the hearing.

Item 3: This is a notice to all other parties.

Items 4–5: Leave these blank. The court will complete them if it orders a hearing.

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.



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 CASE NUMBER:
☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Domestic Violence Order ☐ Attorney's Fees and Costs
☐ Property Control ☐ Other (specify):

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-400-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

Page 1 of 4

Form Adopted for Mandatory Use Judicial Council of California FL-300 [Rev. July 1, 2018] **REQUEST FOR ORDER** Family Code, §§ 2045, 2107, 6224, 6226, 6320–6326, 6340–6343; Government Code, § 26826 Cal. Rules of Court, rule 5.92 www.courts.ca.gov

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.

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
(not domestic 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.

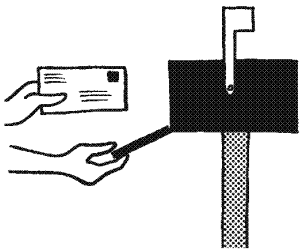
13 "Personal Service"

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 papers (including blank forms) in a sealed envelope and mails them to the address of each party being served (or to the party's lawyer, if the party has one).



The server must be 18 years of age or older and live or work in the county where the mailing took place.

Important! If you have questions about personal service or service by mail, talk to a lawyer or check with your court's Family Law Facilitator or Self-Help Center at ***http://www.courts.ca.gov/selfhelp-courtresources.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 home or office address. (You may use *Declaration Regarding 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 Fam. Code, §§ 17400 and 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:	
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: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

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.: FAX NO. *(Optional):* 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:	
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 request the court cancel (set aside) any voluntary declaration of parentage or paternity which you may have signed or to request the court find a voluntary declaration is void (invalid) (Fam. Code, §§ 7573.5, 7576, 7577). To make this request, you must file a *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280).

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.

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 Fam. Code, §§ 17400, 17406)	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* 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:	
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* (form FL-276)
   - ☐ *Responsive Declaration to Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (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:	☐ Name of party or attorney served:
(c) Address:	(c) Address:
☐ Name of party or attorney served:	☐ Name of party or attorney served:
(c) Address:	(c) Address:
☐ Name of party or attorney served:	☐ Name of party or attorney served:
(c) Address:	(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]

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Diana C. Baker, Superior Court of California, County of Monterey and County of San Benito	N	Regarding the new set-aside rules for Voluntary Declarations of Paternity (VDOP), my comments concern the statement that there are "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." (Invitation to Comment pages 5-6.) Current Family Code section 7575(c)(1) which allows signatories to use Code of Civil Procedure section 473 as a basis for a set aside is inoperative on January 1, 2020. There is nothing in the new legislation that continues that option for signatories before January 1, 2020. In fact, in the Bill Analysis for the Senate Judiciary Committee dated June 18, 2018, the sponsors of the new legislation rejected a request from the Family Law Section of the California Lawyers Association (FLEXCOM) to continue to include Code of Civil Procedure section 473 for signatories. To be eligible to receive federal child support enforcement funds, California's VDOP provisions need to comply with 42 U.S.C.	The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

	Commenter	Position	Comment	Committee Response
			section 666. Among other things, federal law expressly provides that, after the 60-day rescission period has elapsed, a signed VDOP may be challenged "only on the basis of fraud, duress, or material mistake of fact." The language in proposed new Section 7576 directly tracks this federal requirement. Also, to be clear, this language is drawn directly from the UPA (2017). As stated in the comment to the Act, the VDOP Article of the "UPA (2017) was drafted in close consultation with the federal Office of Child Support Enforcement (OCSE) to be consistent with Title IV-D requirements." Current California law as expressed in current 7575(c)(1) is out of compliance with federal law, as it allows for challenges in a wider array of circumstances. Accordingly, FLEXCOM's requested amendment to the bill likewise would render the bill to be out of compliance with the requirements of 42 U.S.C. section 666. Bill Analysis to the Senate Judiciary Committee at page 10. The intent of the bill is to conform to federal law. The new law makes no distinction between signatories who sign before and those who sign after January 1, 2020. To carve out an exception for pre-January 1, 2020 signatories	

	Commenter	Position	Comment	Committee Response
			would mean that hundreds of thousands of signatories would continue to be out of compliance with federal law. When I queried the Forms Committee staff as to why they thought there were different rules for VDOP signatories who signed prior to January 1, 2020, the response was that the VDOP forms signed before January 1, 2020 contain the old warning language regarding set aside rules so those signatories should have the old set aside rules apply. However, at least as of 2008, the old forms do not include any reference to Code of Civil Procedure section 463. The Declaration of Paternity- Notice (12/08) states: "A Declaration of Paternity may be challenged in court only in the first two years after the child's birth by using blood and genetic tests that prove that the man is not the biological father. It also may be overturned if the father or mother is able to prove that he/she signed the form because of fraud, duress, or material mistake of fact." In other words, the old forms track the new statutory language.	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			To summarize, there appears to be no prejudice to signatories who signed before January 1, 2020 and excluding them from the new legislation will continue California's noncompliance with federal law. If there is any doubt, I urge the Forms Committee to consult the sponsors of the legislation to determine their intent.	
2.	California Department of Child Support Services by Shannon Richards, Attorney III	AM/D	***RULES*** **Rule 5.350** No comment. **Rule 5.635 –** Parentage (b) (6) Should replace "man" to "person", also replace "his" with "their." Capitalize the form Voluntary Declaration… The sentence would then read: Has a **person** formally or informally acknowledged 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 **their** name placed on the child's birth certificate?	No response required. The committee is sensitive to making references in rules and forms gender inclusive whenever possible but does not recommend doing so to this rule at this time as the applicable sections of the Welfare and Institutions Code still use gendered nouns and making this rule gender inclusive may result in unintended consequences.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Bold showing proposed revision. ***FORMS*** **FL-100 Petition** No comment needed **FL-120 Response** No comment needed **FL-170 Declaration for Default or Uncontested Dissolution or Legal Separation** Page 1, item 5(c) Typographical error. Change "daone" to "done". Page 3, item 9(a) Capitalize the name of the form to read: "Voluntary Declaration of Paternity or Parentage"	No response required. No response required. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.

	Commenter	Position	Comment	Committee Response
			FL-200 Petition to Determine Parental Relationship Page 1, item 1. The "is" should be removed after "Petitioner" and instead added to the beginning of item (c) to make the sentence grammatically correct. Page 1, item 1(a) Typographical error. Should read "gave birth to **<u>the</u>** child in item 2. Page 2, item 7(a), (b) and (c) – is the parent of the children listed in item 1 – Should be "item 2" as no children are listed in item 1. Page 2, item 8(a) – same as above, should be "item 2", not "item 1". Page 2, item 9 and 10 – The "Other" box should be reversed with the "Joint" box, otherwise it appears you are looking for how the expenses/fees are to be paid (in an "other" manner, rather than jointly), instead of referring to an "Other" person. *Should item 1b be changed to state, "Petitioner	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it with some modifications to the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions with some modifications to the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it with some modifications into the revisions that it is recommending for adoption. The committee is recommending that the check box for "Other" be eliminated from this item requiring payment since "Other" is not a party to this action.

	Commenter	Position	Comment	Committee Response
			wants to be determined to be a parent of the child"? No, it could be changed to: "Petitioner wants to be determined a parent of the child." Adding the "to be" twice doesn't add anything to the sentence. *Should the form require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court? No – it is not required on a Petition for Dissolution (FL-100, item 4(e)), a Response (FL-120, item 4(e)) so why would parties to the UPA action be required to provide anything different. Requiring the declaration prior to the Petition may delay filings while the Petitioner seeks to obtain a copy (and if it is from out of state it may be a significant delay). Some states such as Nevada have statutes that severely restrict access to the document. In these cases, requiring the form may prevent a participant from filing. Suggestion: Let parties know that while not required at the time of filing, if there is a contest, they will be expected to bring it to court with them at the time of any contested hearing.	Thank you, after review, the committee has determined to modify to refer to "wants to be determined as a parent of the child." The committee recommends that the voluntary declaration of parentage or paternity not be required for the FL-200. The committee recommends that the additional information suggested regarding potential need in the future be included on the Judicial Council's self-help website (www.courts.ca.gov/selfhelp) rather than on the form itself.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			FL-220 Response to Petition to Determine Parental Relationship	
			Page 1, item 4(b) – Typographical error. A space is needed between "started" and "in".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 6(a) "Voluntary Declaration of Parentage or Paternity" should be capitalized to denote a form name.	Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.
			Page 2, item 10 and 11 – The "Other" box should be reversed with the "Joint" box, otherwise it appears you are looking for how the expenses/fees are to be paid (in an "other" manner, rather than jointly), instead of referring to an "Other" person. *Should item 2b be changed to state, "Petitioner wants to be determined to be a parent of the	After review, the committee has determined to remove the "Other" checkbox to be responsible for payment since "Other" is not a party to the action.

	Commenter	Position	Comment	Committee Response
			child"? No, it could be changed to: "Petitioner wants to be determined a parent of the child." Adding the "to be" twice doesn't add anything to the sentence. *Should the form require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court? No – it is not required on a Petition for Dissolution (FL-100, item 4(e)), a Response (FL-120, item 4(e)) so why would parties to the UPA action be required to provide anything different. Requiring the declaration prior to the Petition may delay filings while the Petitioner seeks to obtain a copy (and if it is from out of state it may be a significant delay). Some states such as Nevada have statutes that severely restrict access to the document. In these cases, requiring the form may prevent a participant from filing. Suggestion: Let parties know that while not required at the time of filing, if there is a contest, they will be expected to bring it to court with them at the time of any hearing. **FL-230 Declaration for Default or**	Thank you, after review, the committee has determined to modify to refer to "wants to be determined as a parent of the child." The committee recommends that the voluntary declaration of parentage or paternity not be required for the FL-200. The committee recommends that the additional information suggested regarding potential need in the future be included on the Judicial Council's self-help website (www.courts.ca.gov/selfhelp) rather than on the form itself.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Uncontested Judgment Item 5. The form name should be capitalized: **Voluntary** Declaration of Parentage or Paternity.	Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.
			FL-235 Advisement and Waiver of Rights Re: Determination of Parental Relationship No comment	No response required.
			FL-250 Judgment Page 1, item 2(f)(4) and 2(g)(4) – the form name is **Voluntary** Declaration of Parentage or Paternity. This should be capitalized to denote a form name.	Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Also, ADD CHECKBOX, Paternity/Parentage or grounds upon which Judgment is based.	This form is used for both a judgment of parentage, but also for child custody and support when parentage has previously been determined. It appears that the procedural basis for the determination is identified on the form.
			FL-260 Petition for Custody and Support of Minor Children Page 1, item 2(b) – the form name is **Voluntary** Declaration of Parentage or Paternity. This should be capitalized to denote a form name, as opposed to some random writing where someone stated they were the child's parent.	Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.
			Page 1, item 2(d) – Shouldn't this be "in any court action", and not limited to juvenile or governmental child support actions? In other words, it should read: "Respondent and I have been determined to be the parents in the	The committee does not recommend a change to this form. The two case types listed involve a focus on determination of parentage rather than, for example, a civil case, where parentage may be assumed without opportunity for testing. Since the basis for jurisdiction in the FL-260 and

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			following court case:" *Should the form require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court? No – it is not required on a Petition for Dissolution (FL-100, item 4(e)), a Response (FL-120, item 4(e)) so why would parties to the UPA action be required to provide anything different. Requiring the declaration prior to the Petition may delay filings while the Petitioner seeks to obtain a copy (and if it is from out of state it may be a significant delay). Some states such as Nevada have statutes that severely restrict access to the document. In these cases, requiring the form may prevent a participant from filing. Suggestion: Let parties know that while not required at the time of filing, if there is a contest, they will be expected to bring it to court with them at the time of any hearing. **FL-270 Response to Petition for Custody and Support of Minor Children*** Page 1, item 2(b) the form name is **Voluntary** Declaration of Parentage or Paternity. This should be capitalized to denote a form name.	FL-270 is that an official V*oluntary Declaration of Parentage* or *Voluntary Declaration of Paternity* has been signed and submitted to the Department of Child Support Services, it recommends that the form be mandatory for those cases. This prevents a party from mistakenly filing a case for custody and support only if parentage has not been legally determined. If the form is not available, the petitioner can instead file an FL-200 Petition to Determine Parentage to obtain orders for custody and support. The committee recommends that the additional information suggested regarding potential need in the future be included on the Judicial Council's self-help website (www.courts.ca.gov/selfhelp) rather than on the form itself. Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be

	Commenter	Position	Comment	Committee Response
				called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included.
			Page 1, item 2(d) – Shouldn't this be "in any court action", and not limited to juvenile or governmental child support actions? In other words, it should read: "Petitioner and I have been determined to be the parents in the following court case:"	The committee does not recommend a change to this form. The two case types listed involve a focus on determination of parentage rather than, for example, a civil case, where parentage may be assumed without opportunity for testing.
			*Should the form require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court?	Since the basis for jurisdiction in the FL-260 and FL-270 is that an official V*oluntary Declaration of Parentage* or *Voluntary Declaration of Paternity* has been signed and submitted to the Department of Child Support Services, it recommends that the form be mandatory for those cases. This prevents a party from mistakenly filing a case for custody and support only if parentage has not been legally determined. If the form is not available, the petitioner can instead file an FL-200 Petition to Determine Parentage to obtain orders for custody and support.
			No – it is not required on a Petition for Dissolution (FL-100, item 4(e)), a Response (FL-120, item 4(e)) so why would parties to the UPA action be required to provide anything different. Requiring the declaration prior to the Petition may delay filings while the Petitioner seeks to obtain a copy (and if it is from out of state it may be a significant delay). Some states	Agree. The committee recommends that the

	Commenter	Position	Comment	Committee Response
			such as Nevada have statutes that severely restrict access to the document. In these cases, requiring the form may prevent a participant from filing. Suggestion: Let parties know that while not required at the time of filing, if there is a contest, they will be expected to bring it to court with them at the time of any hearing. **FL-272 Notice of Motion to Cancel (Set Aside) Judgment of Parentage** Comment: The proposed form is titled to Set Aside a Judgment of Parentage, however Page 2, item 8 seeks not only to Set Aside Parentage, but also a Voluntary Declaration of Parentage/Paternity, Child Support Orders and seeks the affirmative relief of ordering genetic testing and an order of Non-parentage. It may be appropriate to consider check boxes on the Caption that may state: NOTICE OF MOTION and then the boxes could be Cancel/Set Aside Judgment; Cancel/Set Aside Declaration of Paternity/Parentage; Cancel/Set Aside support orders; Order Genetic Testing; and Judgment of Non-Parentage. The title also does not suggest that there is a request to declare a Judgment void (if based on a void voluntary declaration of paternity). FC 7576, 7577 calls this "a proceeding or action to challenge". It may be appropriate to title the motion to be consistent	additional information suggested regarding potential need in the future be included on the Judicial Council's self-help website (www.courts.ca.gov/selfhelp) rather than on the form itself. The committee does not recommend making the suggested change as the form title could become too confusing to litigants. The committee does not recommend capitalizing "judgment of parentage" as not all parentage

	Commenter	Position	Comment	Committee Response
			with the Code. Page 2, item 6. Judgment of Parentage should be capitalized to denote a form name. Page 2, item 8. Judgment of Parentage and Voluntary Declaration of Parentage or Paternity should be capitalized to denote a form name. Page 2, item 10. Add the word "together" as: (the marital presumption means if the parents are married and living **together** at the time of conception and birth…) Page 2, item 9. Adding to the theme from the comment above, this section should say "A Declaration in Support of the Motions is attached for each child:;then add check boxes and develop a separate Declaration form for	judgments are always made on the applicable Judicial Council form (e.g., in some counties a judgment may be entered on a local form such as Minutes and Order. Since parents have been signing a voluntary declaration of paternity for many years, and now, in California, will be signing a declaration of parentage, it is not accurate to suggest that they will have a form entitled "Voluntary Declaration of Paternity or Parentage." This form will also be called different names in different states. Hence, the committee recommends that all references be to a "voluntary declaration of parentage or paternity." That way, all versions of the form can be included. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. Because this suggestion would entail important substantive changes to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider this suggestion during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			each of the items, listing them here. **For the following forms the comment is based on the current version of the form, however, <u>significant issues may affect utilizing the current version of these forms</u>. Please see ADDITIONAL COMMENT, supra as it relates to these forms: FL-273 Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage FL-274 Information Sheet for Completing Notice of Motion to Cancel (Set Aside) Judgment of Parentage FL-280 Request for Hearing and Application to Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity **FL-273 Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage** Page 1, item 2 (a) through (d). The terms "Father" and "Mother" should become "parent".	The committee is sensitive to making references in rules and forms gender inclusive whenever possible but does not recommend doing so to this part of the form at this time as the applicable sections of the Family Code still use gendered nouns and making this form entirely gender inclusive may result in unintended consequences. (See Fam. Code, § 7645, et. seq.) The committee agrees with this suggestion and has incorporated it into the

	Commenter	Position	Comment	Committee Response
				revisions that it is recommending for adoption.
			Page 1, item 2 item 3(a) – "father" should become "parent". [Example: Same sex female union previously established parentage via POP declaration] In this circumstance "father" is an inappropriate title.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 2(f) – revise language to say: Person with primary physical custody of child. [In cases where parents share physical custody this could be confusing.]	The committee agrees with the suggestion to use "parent" but does not agree to the suggestion to capitalize "judgment of parentage" for the reasons stated above.
			Page 2, item 3(b) – Judgment of Parentage should be capitalized to denote a form; "father" should become "parent" just like in item 3(a)	The committee agrees with the suggestion to use "parent" but does not agree to the suggestion to capitalize VDOP for the reasons stated above.
			Page 2, item 4 – "father" should become "parent"; and all instances of "voluntary declaration of parentage or paternity" should be capitalized to denote it is a form. [Voluntary Declaration of Parentage or Paternity]	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, comment between 4(c)(4) and 4(c)(5)	
			The effective date of a Voluntary Declaration of Paternity/Parentage is not the date it was signed, but instead the date it was filed with DCSS (provided both signatories were adults). [FC §7573] DCSS recommends removing this	The committee agrees with the suggestion to delete item 5 and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			sentence. Page 2, items (5) and (6) DCSS recommends removing these two items; and renumbering item (7) to be item (5). See ADDITIONAL COMMENTS for reasoning. See ADDITIONAL COMMENTS, supra, for further information/suggestions. *Does the form correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity? No. By utilizing "father" instead of parent the current proposed form disregards the additional genders available for the parentage action. In addition, the statutes regarding the set aside are not accurately reflected. Post 1/1/2020, only the more limited grounds for set aside exist; the grounds to set aside change based on whether the challenger was or was not a signatory to the VDOP. Similarly, standing to sign is different between those who signed the VDOP and the challengers who did not. The suggested changes made in the ADDITIONAL COMMENTS, supra to the proposed forms reflect the new rules regarding	The committee is sensitive to making references in rules and forms gender inclusive whenever possible but does not recommend doing so to this part of the form at this time as the applicable sections of the Family Code still use gendered nouns and making this form entirely gender inclusive may result in unintended consequences. (See Fam. Code, § 7645, et. seq.) The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

	Commenter	Position	Comment	Committee Response
			parentage/paternity set asides. **FL-274 Information Sheet for Completing Notice of Motion to Cancel (Set Aside) Judgment of Parentage** This form is very confusing. It may be nice to provide a table that lists who can participate in a set aside, what the grounds available are, and what the timeframe is for each ground. "voluntary declaration of parentage or paternity" and "judgment of parentage" should be capitalized as: "Voluntary Declaration of Parentage or Paternity" and "Judgment of Parentage" to identify them as the title to forms if this is what was intended. Persons who may bring the motion: • A signatory to a Voluntary Declaration of Parentage or Paternity • A Presumed Parent • An alleged genetic parent who is not a donor • A biological mother • A child who is the subject of the Judgment of Parentage or Voluntary Declaration of Parentage or Paternity • An "interested party" [a non-signer of a	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Voluntary Declaration of Parentage or Paternity, but claim to be a parent or is asking the court to find them not a parent of the subject child/ren] • A legal representative of any of the above persons. Time Frames: 1. If action is brought by a signatory to the Voluntary Declaration of Parentage or Paternity: a) After 60 days after the last person who signed the VDOP (if both parties were 18 years old when they signed the VDOP, or 60 days after the minor signatories have both become 18 or emancipated) b) Not later than 2 years after the effective date of the Voluntary Declaration. (if both parents were 18 years or older when they signed the declaration, this is the date the declaration was filed with the Department of Child Support Services.) [Only grounds available are Fraud, Duress, or	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

	Commenter	Position	Comment	Committee Response
			Material Mistake of Fact] 2. If the action is brought by someone who did not sign the Voluntary Declaration of Parentage or Paternity: a) Within 6 months of the original order for custody, visitation or support for the child was entered IF the grounds to set aside are mistake, inadvertence, surprise, or excusable neglect; or b) Not later than 2 years after the effective date of the Voluntary Declaration. (if both parents were 18 years or older when they signed the declaration, this is the date the declaration was filed with the Department of Child Support Services.) 3. There are no deadlines to assert the VDOP is void at the time of signing pursuant to Family Code § 7573.5. Page 1, from where it says: This motion may not be filed if any of the following conditions apply:…. change "The marital presumption	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			means if the parents are married and living **together** as spouses at the time of conception and birth,…" Page 2, change: " for the same previously established father…" to "previously established **parent**". "A previously established mother" or "father" to "**parent"** (several instances on page) Service should be to: All previously established **parents**; child's guardian ad litem, if any, any presumed or intended parent and each person alleging to be a genetic parent and the LCSA. (See Family Code § 7635) GENETIC TESTING – No comment ADDITIONAL INFORMATION section: The third sentence down should read: "If the previously established **parent** is found not to be the **genetic parent** of the child,… The fourth sentence down; change "the previously established father" to "the previously established **parent"**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and

	Commenter	Position	Comment	Committee Response
			See ADDITIONAL COMMENTS, supra **FL-276 Response to Notice of Motion to Cancel (Set Aside) Judgment of Parentage** Page 2, item 7(b) - add the word "together": "married and living **together**…" Page 2, item 7(d) – change "previously established father" to "previously established **parent**" Page 2, item 7(e) – Capitalize Voluntary Declaration of Parentage or Paternity to identify it as a form. Page 2, item 7(f) – change "father" to "**parent"** and change "biological" to "**genetic**" to reflect consistent usage with AB 2684 language. Page 3, Title in the footer: Should have RESPONSE TO added Inside the Box above PROOF OF SERVICE: A copy of the response should be provided to "the other party or the other party's attorney, the local child support agency, **and any alleged or presumed parent who was served with the original Notice of Motion**."	has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend making this change for the reasons stated above. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			FL-278 Order After Hearing on Motion to Cancel (Set Aside) Judgment of Parentage Page 1, item 2: should read "**The previously established parents are: a. b. c."** This would make the language gender neutral. Page 1, item 3: change "father" to "**parents"** Change "Signed Voluntary Declaration…" to "Filed Voluntary Declaration". Page 2, after item 5(i). Instead of "The previously established father has no right to reimbursement" – reword the sentence to say: "There is no right to reimbursement to an obligor parent for any child support paid before the cancellation (set-aside) …." Page 2, items 6c – 6 g: change "father" to "**parent**". It is conceivable in the future to have a set aside based on a same sex female couple that is trying to be set aside. The current wording would be inappropriate for that scenario. Page 2, item 6e and 7 g: change "biological" to "**genetic**" to be consistent with the code. Page 3, item 7, change "father" to "**parent".**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption, but does not recommend capitalizing "voluntary declaration of parentage or paternity"

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

	Commenter	Position	Comment	Committee Response
			Page 3, item 8, capitalize Voluntary Declaration of Parentage or Paternity to denote a form title. Also, this section should have an option for if the order determines that the Voluntary Declaration of Parentage or Paternity is void, a copy should also be provided to the Department of Child Support Services. The address for our POP unit is: CA DCSS-POP P.O. Box 419070 – MS 241 Rancho Cordova, CA 95741-9070. **FL-280 Request for Hearing and Application to Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity** Throughout form: Capitalize "Voluntary Declaration of Parentage or Paternity" to identify it as a form, rather than a statement or other writing. Page 2, item 10 (below item a(4)) Delete the sentence. See ADDITIONAL COMMENT, supra. If a party did not sign the declaration it they may claim mistake, inadvertence, surprise or excusable neglect pursuant to CCP § 473(b), within six (6) months of the initial custody or visitation order; they may, within 2 years of the effective date of the Declaration, claim to be a parent (presumed, intended or genetic) pursuant to FC § 7577; or they may at any time claim the Voluntary Declaration of Parentage/Paternity is	for the reasons stated above. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			void pursuant to FC § 7573.5. Page 2, item 10 a (5) delete perjury. This ground for set aside is only available in Dissolution, Legal Separation or Nullity actions, not in UPA cases. See FC § 2120, et seq. Since this form is specific to Voluntary Declarations of Parentage/Paternity and doesn't have anything to do with setting aside any judgment DCSS does not believe this ground is appropriate here. Footer: Please add a reference is to FC § 7573.5. *Does the form correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity? No. This form does not ask when the initial order for custody, visitation or support was ordered (6 months from this date is the timeframe to file based on CCP § 473(b) mistake, inadvertence, surprise or excusable neglect; this form does not distinguish between a VDOP signer and a non-signer [their grounds to set aside the VDOP are different as are the persons with standing to bring the action]. Below is a graph of the statutes as we	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The proposed revised form request the date the initial order was entered (item 9) and also requests the names of the people that signed the voluntary declaration (item 7). The committee agrees with these suggestions and

	Commenter	Position	Comment	Committee Response
			understand: **By Whom:** **<u>Grounds Timing By Whom</u>** Rescission 60 days from signing Signatory to VDOP FC 7575 Unless custody/support ordered Fraud, duress 61 days from signing VDOP up Signatory to VDOP FC 7576 Material mistake of fact to 2 years after the effective date NOM/Set Aside 2 years from the Non donor alleged genetic +Best Interest of Child Effective date of VDOP parent [GT will be ordered] 7611 presumed parent "Child, Child's natural mother Non-spouse donor of ova/sperm Intended parent in Assisted Reproductive Agree [**Non signatories to VDOP]** FC 7577 473(b) 6 months from initial order Non signatory to VDOP + For custody/visitation/support any with standing under NOM/Set Aside FC 7It may be helpful to have something like this table in the instruction forms for cancellations/set asides so that it assists participants understand which sections may apply and the timeframes upon which motions should be filed. **FL-281 Information Sheet for Completing Request for Hearing and Application to**	has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity Throughout form: Capitalize "Voluntary Declaration of Parentage or Paternity" to identify it as a form, rather than a statement or other writing.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2 item 9. This provides instructions to complete information about a Judgment that may have been issued. If you keep the separate forms format, it may be a good idea to reference – *You may wish to consider seeking a set aside of the Judgment at the same time you set aside the Voluntary Declaration [and provide the form number]*	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 10a(3) – Delete we do not believe perjury is a ground to set aside a Voluntary Declaration of Paternity – also the numbers do not match those on the Request for Hearing [i.e. 10a(4) on the Request/Application deals with a void VDOP; 10a(4) on the Information Sheet deals with perjury. Page 3, 10a(5) – Fraud, Duress and Material Mistake of Fact are the defenses to a person who actually signed the VDOP; this section should not be referencing those who did not	The intent of this section is to describe in plain language the defenses available under Code of Civil Procedure section 473, therefore the committee does not recommend revisions. The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that

	Commenter	Position	Comment	Committee Response
			sign the VDOP. Delete the NOTE after subsection (6). The timing of the signature of the VDOP is not the relevant time; it is when you file the motion to set aside the VDOP, which statute is in effect. Since this form is effective 1/1/2020 necessarily the Application/Request will be after the effective date of the new statute. See ADDITIONAL COMMENTS, supra. <u>Timeframes</u>: DCSS believes this section is inaccurate. See ADDITIONAL COMMENTS, supra. If you signed the VDOP – between 61 days from signing the VDOP (if both were 18 at the time) and not later than 2 years from the effective date. If you didn't sign the VDOP - 6 months from the initial custody/visitation/support order regarding the child if using the grounds: mistake, inadvertence, surprise or excusable neglect; and up to 2 years for the other grounds: Challenger was a nondonor alleged genetic parent, a presumed parent under FC § 7611, or a non-spouse intended parent in an assisted reproductive agreement at the time the	the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations. See previous response. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is

	Commenter	Position	Comment	Committee Response
			VDOP was signed and setting aside the VDOP is in the best interest of the child. (See FC § 7577) There is no timeframe to make a claim that a VDOP is void. (See FC § 7573.5) Footer: No reference is made to FC § 7573.5 **FL-285 Responsive Declaration to Application to Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity** Capitalize Voluntary Declaration of Parentage or Paternity throughout. There is no option on this form for the party to claim the Voluntary Declaration is Void under FC § 7573.5. If you do modify the form, the Footer should also contain the reference to FC § 7573.5. **FL-290 Order After Hearing on Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity** Capitalize Voluntary Declaration of Parentage	recommending for adoption. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into

	Commenter	Position	Comment	Committee Response
			or Paternity throughout. Item 3. A checkbox should be added to say the Voluntary Declaration is VOID, and provide space for the grounds. Item 8. There should be an option to state the VDOP is canceled (set aside) or Void. **The address for the DCSS POP unit is wrong**. Please send copies of the orders to: DCSS-POP Unit PO Box 419070 – MS 241, Rancho Cordova, CA 95741-9070 **FL-300 Information Sheet for Request for Order** Page 1, item 2 "voluntary declaration of parentage or paternity" should be capitalized to denote a form**.** F**L-600 Summons and Complaint or Supplemental Complaint Regarding Parental Obligations** Page 2, item 2 b. modify "item 1…" to "Section A of the Voluntary Declaration of Parentage" [This conforms to the new form	the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee does not recommend making this change as the initial "a" refers to the entire list of items that follow.

	Commenter	Position	Comment	Committee Response
			being developed by DCSS]. Page 2, item 3a - Capitalize Voluntary Declaration of Parentage or Paternity. Page 6, right column, second paragraph: add an "a" to read: "subject to a divorce decree, support order, or **a** parentage determination or acknowledgement." **FL-610 Answer to Complaint or Supplemental Complaint Regarding Parental Obligations** Page 3, item 1. Capitalize Voluntary Declaration of Parentage or Paternity. Alter the "NOTE" statement to include voiding the VDOP. After the "NOTE" statement, it may be helpful to add the Form names and numbers here if someone were to wish to set aside the VDOP or declare it void. **FL-615 Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment**	The committee does not recommend capitalizing "voluntary declaration of parentage or paternity" for the reasons stated above. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. No response required. No response required.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			No Comment **FL-686 Proof of Service by Mail** No Comment **FL-695 Advisement and Waiver of Rights for Stipulation** No Comment **ADDITIONAL COMMENTS** Family Code § 4 governs the operability of provisions of AB 2684. The Invitation presumes that the rules for setting aside a VDOP signed prior to 1/1/2020 are those that existed at the time of signing. Generally, however, the new law applies as of the operative date of that new law, subject to limited exceptions. (Cal. Fam. Code § 4(c)). The new law applies "…to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date…" (supra). See also, *In re Marriage of Fellows* (2006) 39 Cal.App.4th 179.	No response required. The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

	Commenter	Position	Comment	Committee Response
			Here, the Legislature did not express its intent to save the prior set aside rules of FC § 7575, so we must assume that they did not intend to save the prior law. Absent express intent to prevent the application of the new set aside rules to existing VDOPs, DCSS believes that the forms as drafted invite confusion for parties. To the extent a party wishes to argue that application of the new set aside rules to a VDOP signed prior to 1/1/2020 would be inequitable under FC § 4(h), this could be accomplished by adding an "Other" box for reasons to set aside, on the FL-273 and FL-280 forms. **FL-273 Declaration in Support of Motion to Cancel (Set Aside) Judgment of Parentage** Statement between items 4(c)(4) and 4(c)(5) should read: I believe there is a legal error in the balance of the form. I have interpreted the statutes to mean that post 1/1/2020 when a motion to set aside a judgment or a VDOP is filed it is governed by the new statue and its more restricted grounds for set aside. The test is not when the VDOP was signed (or signed and filed = effective date), but when the motion to set aside is granted. [See Family Code § 4]. With this	The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

	Commenter	Position	Comment	Committee Response
			understanding the form should look like: **COMPLETE THIS SECTION ONLY IF THERE IS A VOLUNTARY DECLARATION OF PARENTAGE OR PATERNITY** 4. A court order was entered based on the Voluntary Declaration of Parentage or Paternity on (date): in case number (specify): 5. I am a signer of the Voluntary Declaration of Parentage or Paternity (VDOP) a. Both signers of the VDOP were 18 at the time of signing it is at least 60 days after the last signature on the VDOP b. At least one signer of the VDOP was under 18 (a minor) at the time of signing it is at least 60 days after the minor turned 18 or was emancipated c. It has been less than 2 years since the VDOP became effective. (the date filed with the Department of Child Support Services) d. I ask the court to cancel (set aside) the VDOP because: (1) Fraud (I was kept in ignorance of the true	

	Commenter	Position	Comment	Committee Response
			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) 6. a. I am not a signer on the VDOP, but I am: (check all that apply) An alleged genetic parent who is not a donor of ova/sperm to this child A donor of ova/sperm to the conception of this child An intended parent in an agreement for assisted reproduction for this child The child the subject of these proceedings, or a guardian ad litem representing the child The natural mother of the child the subject of these proceedings A presumed parent because I: was married to a parent of the child at the time of birth married or attempted to marry a parent of the child within 300 days of the birth have held this child out as my own I ask the court to cancel (set aside) the VDOP because (check all that apply): (1) My mistake, inadvertence, surprise, or excusable neglect It has been less than 6 months since the first	

	Commenter	Position	Comment	Committee Response
			order for custody, visitation or support of this child. I am not a donor and believe I am a genetic parent of this child I want the court to find that I am a presumed parent Because: (4) I am an intended parent in an agreement for assisted reproduction for this child (5) I believe the child's best interest requires cancelling the VDOP (6) It is less than 2 years from the effective date of the VDOP c. I ask the court to cancel (set aside) the VDOP as void because (check all that apply): (1) Someone who did not sign the VDOP was married to the birth parent at both the time of conception and birth. (2) Someone who did not sign the VDOP is a presumed parent under FC 7611(a-c) (3) A court had entered a Judgment of Parentage of this child at the time the VDOP was signed (4) A signatory to the VDOP was a non-marital sperm/ova donor through a licensed physician or sperm bank, and no agreement exists for the	

	Commenter	Position	Comment	Committee Response
			donor to be a parent. (5) A signatory to the VDOP says they were an intended parent under an agreement for assisted reproduction, but the child was not conceived through assisted reproduction. This suggested format includes the option of having all items in one form. **FL-274 Information Sheet for Completing Notice of Motion to Cancel (Set Aside) Judgment of Parentage** It is unclear if the proposal is for all Motions to Cancel/Set Aside including family law judgments, UPA actions and IV-D governmental agency actions, including if they were based on a Voluntary Declaration of Parentage or not. The grounds and persons who may apply for these options and the grounds upon which they are available are different for each type of action. It is recommended that a table our outline of the grounds available for each type of set aside, including who may apply and the appropriate timeframes be added to the Information Sheet. Pursuant to FC § 4, we believe these grounds will only be those available in the statutes	The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations. Because these would be important substantive changes to the proposal, the committee believes

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			effective 1/1/2020. **FL-280 Request for Hearing and Application to Motion to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity** Should you accept the recommendation of DCSS to have a single Notice of Motion Form [with check boxes for the various options] this form would be unnecessary. DCSS is concerned about the possibility of error in which form is utilized and which grounds for relief are listed on the multiple copies. We believe a Single Notice of Motion, with separate supporting declarations, each with their own criterion will create the least confusion. In addition, if a party wanted to plead items in the alternative, (i.e. Plead the VDOP should be set aside due to fraud, and plead in the alternative that the VDOP is void) one motion would be sufficient, but several supporting declarations would be attached rather than separate motions on each item.	public comment should be sought before they are considered for adoption.
3.	California Lawyers Association, Executive Committee of the Family Law Section (FLEXCOM)	A	FLEXCOM agrees with this proposal.	No response required.
4.	Child Support Directors Association of California, Judicial Council Forms Committee, by Ronald Ladage,	NI	Rule 5.350 -The Committee agrees to the proposed changes.	No response required.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
	Director/Chief Attorney, El Dorado County DCSS		Rule 5.635 - The Committee agrees to the proposed changes. Forms: FL-100 - The Committee agrees to the proposed changes. FL-120 -The Committee agrees to the proposed changes. FL-170 - The Committee recommends modifying the language as follows: In item 2. Add a space between the words "to" and "do". In item 3. Change "Petitioner" to "Petition" and "Respondent" to "Response". In item 5.c. Correct the spelling of word "done" FL-200 - The Committee recommends modifying the language as follows: In item I.a. Add "e" to "th" to correctly spell "the" FL-220 - The Committee recommends modifying the language as follows: In item 2.a. Add "e" to "th" to correctly spell "the"	No response required. No response required. No response required. The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			FL-235 - The Committee agrees to the proposed changes.	No response required.
			FL-250 - The Committee agrees to the proposed changes.	No response required.
			FL-260 - The Committee agrees to the proposed changes.	No response required.
			FL-270 - The Committee agrees to the proposed changes.	No response required.
			FL-272 - The Committee agrees to the proposed changes.	No response required.
			FL-273 - The Committee supports the proposed changes except as delineated below.	
			The Committee supports the proposed changes specifically, the Committee believes the proposed changes in items 4.b. and 4.c. are appropriate and necessary. The Committee agrees that these defenses identifies in item 4.c. (1),(2),(3) and (4) apply universally as defenses regardless of the date the voluntary declaration was signed. "Although some may argue that the defenses identified in 4.c.(5), (6), and (7) continue to apply to motions filed after	The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			December 31, 2019 to set aside a voluntary declaration signed prior to January 1, 2020, others may argue that the repeal of the previous version of the statute eliminated those defenses. Due to the uncertainty regarding the resolution of that issue, the committee suggests those defenses not be specifically identified as being available on the form, but merely included in the catchall "other (specify)" so that the form not influence a particular result nor confuse litigants. Furthermore, the reasons for someone who is not a signatory to a voluntary declaration to set it aside may also be included in the "other (specify)" section. Based on that analysis, the Committee recommends modifying the language as follows:" In item 4.c., delete the sentence after 4.c.(4) which reads "The following reasons apply only to voluntary declarations signed before January 1, 2020 or if you did not sign the declaration." In item 4.c., delete item 4.c.(5). In item 4.c., delete item 4.c.(6). In item 4.c.(7), renumber (7) to (5). In item 4. Add item 4.d. "Explain the facts that support your request:" (This would be consistent with the FL- 280 language) (See attached FL-273 draft example)	The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			FL-274 - The Committee agrees to the proposed changes. FL-276 - The Committee recommends modifying the language as follows: In item 1. Information about the judgment of parentage listed in the motion: Delete item I.a. and 1.b. and replace as follows: Add " Name of Child" and "Date of Birth" below item I. Add 1.a. Check Box -Agree (space) Check Box - Disagree Add 1.b. Check Box - Agree (space) Check Box - Disagree Add 1.c. Check Box -Agree (space) Check Box – Disagree Add 1.d. Check Box -Agree (space) Check Box - Disagree Add 1.e. Check Box - Additional children are listed on attached page. In item 2. Request for genetic testing for each child to establish parentage: Delete item 2.a. and 2.b. and replace as follows: Add " Name of Child" and "Date of Birth"	No response required. The committee prefers to simplify this form by removing all of the “agree” and “disagree” checkboxes from item 1. However, item 1(b) does direct the filer to state why they do not agree if they check this box. The committee prefers to simplify this form by removing all of the “agree” and “disagree” checkboxes from item 2. However, item 2(b) was revised to now direct the filer to state why they do not agree if they check this box.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			below item 2. Add 2.a. Check Box - Agree (space) Check Box - Disagree Add 2.b. Check Box - Agree (space) Check Box - Disagree Add 2.c. Check Box -Agree (space) Check Box - Disagree Add 2.d. Check Box - Agree (space) Check Box - Disagree Add 2.e. Check Box - Additional children are listed on attached page.	
			The Committee is concerned that the proposed revisions to form FL-276 items 1 and 2 do not specify which child they are contesting parentage. The Committee believes that the proposed revisions to items 1 and 2 should provide the identification for each child separately. The Committee suggestions are consistent with the existing forms FL-276 and FL-278.	See comments above.
			In item 7.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 Codes sections 7540 and 7541 apply: The Committee believes this is consistent with	No response required.

	Commenter	Position	Comment	Committee Response
			current law. Proof of Service (page 3): 2.b.(1)(c) and 2.b.(2)(c), delete time of mailing and "replace with place of deposit (City and State)" (See attached FL-276 draft example) FL-278 - The Committee has no opposition to the changes. FL-280 - The Committee recommends modifying the language as follows: In item 10.a. delete the sentence after 10.a.(4) which reads "The following reasons apply only to voluntary declarations signed before January 1, 2020 or if you did not sign the declaration." In item 10.a., delete item 10.a.(5). In item 10.a., delete item 10.a.(6). In item 10.a.(7), renumber (7) to (5). (See attached FL-280 draft example) FL-281 - The Committee agrees to the proposed changes. FL-285 - The Committee recommends modifying the language as follows : In item 1.b. Add Check Box (space) Child's name Check Box (space) Child's date of birth	 The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. No response required. The committee discussed the treatment of voluntary declarations of parentage or paternity filed before January 1, 2020 and whether the new set-aside or old set-aside rules will apply to these declarations. While acknowledging the difficulty of this question, the committee recommends that the relevant forms should indicate that the old set-aside rules will continue to apply to these declarations. No response required. The committee does not think that adding this language is necessary as the filer is directed to state the reasons why they do not agree with the information listed about the children if they check

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Check Box (space) Names of people who signed the voluntary declaration Check Box (space) Date signed and filed with the Department of Child Support Services. In item 2. Remove the word "for" after Request. (See attached FL-285 draft example) FL-600 - The Committee agrees to the proposed changes. FL-610 - The Committee agrees to the proposed changes. FL-615 - The Committee agrees to the proposed changes. FL-686 - The Committee agrees to the proposed changes. FL-694 - The Committee agrees to the proposed changes.	box 1(b). The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. No response required. No response required. No response required. No response required. No response required.
5.	Hon. Amy K. Guerra, Family Court Judge, Superior Court of California, County of Fresno	A	No specific comment.	No response required.
6.	Judy B. Louie, Director/Family Law Facilitator, ACCESS Center, Superior Court of California, County of San	A	Agree that forms should be updated to be more gender neutral	No response required.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
	Francisco			
7.	Superior Court of California, County of Los Angeles	AM	**Proposed Modifications** **Rule 5.350** Page 10, In title of Item (b) and (d) – since they are using "canceled" in most other areas, we should be consistent and use "cancel, set aside" where "set aside" is used. **Form FL-170** Page 18, Item 5.c. – Correct typo – "daone" to "done" **Form FL-200** Page 21, Item 1.a. – Correct typo – "th" to "the" Page 21, Item 1 – Remove "is" from Petitioner is and then insert "is" in 1.c. so it reads "is the child…" Page 22, Item 7.c. Petitioner requests genetic testing to determine whether … □ Other (person in 7.a.) is the parent of the child listed in item 1. – Why would they list the other person in 7.a. if they wanted genetic testing to determine parentage? Replace "person listed in 7.a. with a line to write in the person's name. Page 22, Item 8.a. and 8.d.(3) – Need enough space after "Other" to be able to write a name □ Other _____ should have the right to visit the children as follows: **Form FL-220**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Page 24, Item 2.a. – Correct typo – "th" to "the" Page 24, Item 2.c. and 2.d. – Insert "is" at beginning of section so it reads "The petitioner c. is not certain whether… d. is the child or child's personal …"	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			Page 24, Item 4.b. – Correct typo "startedin" to "started in"	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			Page 25, Item 9.a. – Need enough space after "Other" to be able to write a name □ Other _____ is found to be the parent of the…	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 25, Item 9.d.(3) – Need enough space after "Other" to be able to write a name □ Other _____ should have the right to visit the children as follows:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 25, Item 14 – Remove period after "Child Support" in the heading	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 25, Signature line – Change "Signature of Petitioner" to "Signature of Respondent"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-230 Page 26, Item 3 – Change the name of the form from "Petition to Establish" to "Petition to Determine"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 26, Item 3 – Change name of form from "Petition to Establish Custody and Support" to	The committee agrees with this suggestion and has incorporated it into the revisions that it is

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			"Petition for Custody and Support of Minor Children"	recommending for adoption.
			Page 26, Item 14 – Change the name of the form from Establishment to Determination	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-235	
			Missing page number – Match the footer to the header to "ADVISEMENT AND WAIVER OF RIGHTS RE: DETERMINATION OF PARENTAL RELATIONSHIP" to include colon in footer as well	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-250	
			Page 27, Item 2.g.(2) – Correct "Establishment" to "Determination" in title of form	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-270	
			Page 32, Signature line – Change "Signature of Petitioner" to "Signature of Respondent"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-272	
			Page 34, Item 11. – (A guardian ad litem is an adult appointed by the court who represents the interest of a child.) – May give the impression that this would be an attorney representing the child. Change to – (**A guardian ad litem is an adult appointed by the court who advocates or speaks on behalf of the child.**)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-274	
			Page 37, Footer – Change Family Code § "75775" to "7577"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-276	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Page 39, Item 1. – Add "(Item 6 of FL-272)" after "Information about the judgment of parentage listed in the motion:" – to clarify what the form is referring to	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 39, Item 3. – (Same as above) (A guardian ad litem is an adult appointed by the court who represents the interest of a child.) – May give the impression that this would be an attorney representing the child. Change to – (**A guardian ad litem is an adult appointed by the court who advocates or speaks on behalf of the child.**)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 40, Signature line – Change "Signature of Party Making Request" to "Signature of Party Responding to Request"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 41, Item 2.a and b. – Need enough space after "Name of party or attorney served" and after "Name of local child support agency served" to write a name.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 41, Footer – Add "Response to" to name of form	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-278 Page 43, Item 5, Both Subheadings – include "Cancel" with "Set Aside"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form FL-281 Page 48, Instructions for item 1 – Add a period at end of "dept"	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Page 48, Instructions for item 10a.(3) – Add a period at end of sentence	The committee agrees with these suggestions and

	Commenter	Position	Comment	Committee Response
			Page 49, Under the heading, "This motion must be filed within the following time frames:" For clarity, change "If you did not sign the declaration" to "If you are not one of the people who signed the declaration"	has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.
			Form FL-285	
			Page 50, Item 1. – Add (Item 7 of FL-280) after "Information about the voluntary declaration of parentage or paternity listed in the request:" – to clarify what the form is referring to	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Page 50, Signature line – Change "Signature of Party Making Request" to "Signature of Party Responding to Request"	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Does the proposal appropriately address the stated purpose?	
			Yes, the proposal addressed the stated purpose.	No response required.
			Do forms FL-273 and FL-280 correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity?	
			Yes, these forms reflect the new rules.	No response required.
			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"?	Thank you, after review, the committee has determined to modify to refer to "wants to be determined as a parent of the child."

	Commenter	Position	Comment	Committee Response
			Yes, this language should be changed.	
			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? No, judicial officer generally do not ask to see this. Parties frequently do not have a copy. If the other party wants to challenge that one was signed, then it could be ordered produced, and the burden would fall on the parties to produce the evidence.	The committee agrees with this analysis and recommends that FL200 and FL-220 not require the submission of a voluntary declaration of parentage. However, the basis for jurisdiction for using the *Petition for Custody and Support* (FL-260) and the *Response* to that *Petition* (FL-260) is that parentage has already been established by the signing and filing of an official declaration of paternity or parentage under the Parental Opportunity Program, not merely a stipulation drafted for that purpose. Attaching a copy will help ensure that the court truly has jurisdiction. If a copy is not easily available, the petitioner can file a *Petition to Determine Parentage* (FL-200).
			Would the proposal provide cost savings? If so, please quantify. No, we do not anticipate cost savings.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case	

	Commenter	Position	Comment	Committee Response
			management systems? This proposal would require training of Judicial Officers, Judicial Assistants, Research Attorneys, Mediators, Clerical Staff, and Self-Help. Case Management Systems (CMSs) would need to be modified to reflect the new names of the forms. No changes to policies/procedures, but CMS changes are needed. The changes will be to correct the names of titles on the forms and review macros to ensure that correct tiles are being used. Additionally, training staff on new terminology is required. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient. How well would this proposal work in courts of different sizes? The impact should be similar for courts of different sizes.	No response required. No response required. No response required.
8.	Superior Court of California, County of Orange, Juvenile Court and Family Law Divisions by Cynthia Beltran, Administrative Analyst	AM	**Comments** **Declaration for Default or Uncontested (FL-170)** The word “done” is misspelled in	The committee agrees with this suggestion and has incorporated it into the revisions that it is

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			section 5c.	recommending for adoption.
			Response to Petition to Determine Parental Relationship (FL-220)	
			The word "the" is misspelled in section 2a. Also, update the sentence to read, "gave birth to the child/children listed above" in case only one child is listed.	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			Notice of Motion to Cancel (Set Aside) Judgment of Parentage (FL-272)	
			Include a reference to fees with a hyperlink. For example: See Fee Schedule for information about specific fees for this filing.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Request for Specific Comments	
			Would the proposal provide a cost savings?	
			No, there will not be a cost savings.	No response required.
			What would the implementation requirements be for courts?	
			Judges and staff would be informed of the changes. Updates to procedures and the case management system would be needed.	No response required.
			Would 3 months from the Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Yes, 3 months would be sufficient time to implement the changes.	No response required.
9.	Orange County Bar Association by Deidre Kelly, President	A	Does the proposal appropriately address the stated purpose? The proposal appropriately addresses 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?* Forms FL-273 and FL-280 are correct. *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"?* Form FL-200 and FL-220 should be revised to read "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?* Forms FL-200, -220, -260, and -270 should NOT require a copy, since most parents tend	 No response required. No response required. Thank you, after review, the committee has determined to modify to refer to "wants to be determined as a parent of the child." The committee recommends that FL200 and FL-

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			not to keep that form and instead keep the Birth Certificate. The "POP Dec" ("Parental Opportunity Program Declaration") is retained by Dept. of Social Services if needed.	220 not require the submission of a voluntary declaration of parentage. However, the basis for jurisdiction for using the *Petition for Custody and Support* (FL-260) and the *Response* to that *Petition* (FL-260) is that parentage has already been established by the signing and filing of an official declaration of paternity or parentage under the Parental Opportunity Program, not merely a stipulation drafted for that purpose. Attaching a copy will help ensure that the court truly has jurisdiction. If a copy is not easily available, the petitioner can file a *Petition to Determine Parentage* (FL-200).
10.	Superior Court of California, County of Riverside, by Chief Deputy – Legal Services, Susan Ryan	AM	Does the proposal appropriately address the stated purpose? Yes. Do forms FL-273 and FL-280 correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity? Yes. 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"?	 No response required. No response required. Thank you, after review, the committee has determined to modify to refer to "wants to be determined as a parent of the child."

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Yes, however form FL-200 needs corrections to item 1 as follows: 1. Correction: 1. Petitioner is - remove "is" 2. Correction: Box a.) under 1 needs the word "the" corrected. It is currently missing the "e". "a) gave birth to the children	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			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?	
			Yes, FL-200 and FL-220 should require parties to attach a copy of the voluntary declaration of parentage or paternity when submitting the form to the court. FL-260 and FL-270 would not require it as the parties are required to attach FL-105 "Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).	The committee is persuaded by the majority opinion that it should not be required for these forms given the difficulty parents have in obtaining them. FL-105 is required for FL-200 and FL-220 as well as the FL-260 and FL-270, and the FL-100 and FL-120.
			Would the proposal provide cost savings?	
			No.	No response required.
			What would the court's need to do to implement the proposed changes?	

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

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			The court would need to revise forms and add to update packets. The court would need to inform staff of revised forms and revise any local rules and forms to ensure consistency with changes adopted by Judicial Council. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? The size of the court would have no impact.	No response required. No response required. No response required.
11.	Superior Court of California, County of San Diego by Mike Roddy, Executive Director	AM	*Does the proposal appropriately address the stated purpose?* Yes. *Do forms FL-273 and FL-280 correctly reflect the new rules regarding setting aside a voluntary declaration of parentage or paternity?* Yes.	 No response required. No response required.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			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"?	
			Yes, but the second "to be" is not (and need not be) included on those forms.	Thank you, after review, the committee has determined to modify to refer to "wants to be determined as 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?	Given the difficulties for parents in obtaining voluntary declarations of parentage, particularly from other states, and issues such as parents not being aware that they should redact the social security number remain a problem, the committee recommends that the attachments not be mandatory for these initial filings.
			Yes. Additionally, it may be helpful to add language in this section indicating that the social security numbers on the VDOP should be redacted before it is attached.	
			Would the proposal provide cost savings?	
			No.	No response required.
			What would the implementation requirements be for courts?	
			Informing bench, staff, and attorneys of changes. Revising internal procedures, updating forms packets, and updating/adding filings in case management system. Making changes as appropriate to information provided	No response required.

	Commenter	Position	Comment	Committee Response
			to the public on each court's website. Would three months provide sufficient time for implementation?	
			Yes.	No response required.
			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.
			<u>Rule 5.350</u>	
			Subd. (d): Additional text suggested for clarity 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, <u>a copy of</u> the request for hearing and a blank … on the other person or people who signed the voluntary declaration of <u>parentage or</u> paternity. …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Query: Should subd. (d) and form FL-281 specify that a blank copy of the *Responsive Declaration* (form FL-285) need not be served on the local child support agency?	The committee discussed these suggestions to add additional requirements to the rule but does not recommend doing so as such specificity is not required in this rule and the proposed additional

	Commenter	Position	Comment	Committee Response
			Query: Should subd. (d) and form FL-281 specify a deadline for the petitioner to serve notice on the other parties? **Query:** Should subd. (d) and form FL-281 contain a provision requiring the petitioner to file a copy of the Proof of Service with the court? **Rule 5.635** **Subd. (e)(1):** Suggested change for gender neutrality -- Any alleged ~~father~~ parent and ~~his~~ that parent's counsel must complete and submit Statement Regarding Parentage (Juvenile) (form JV-505). Form JV-505 must be made available in the courtroom. **Subd. (e)(2):** Suggested change for consistency To determine parentage, the juvenile court may order the child and any alleged parents to submit to genetic test~~s~~ing and proceed under Family Code section 7550 et seq. **Subd. (f):** Suggested change for consistency -- If the court ~~establishes~~ determines	rules would not apply to all actions or motions (e.g., if order shortening time is granted, time deadline for service would be different than stated in rule) and could cause confusion. The committee is sensitive to making references in rules and forms gender inclusive whenever possible but does not recommend doing so to this rule at this time as the applicable sections of the Welfare and Institutions Code still use gendered nouns and making this rule gender inclusive may result in unintended consequences. Because the suggested changes are to sections of the rule that were not included in the original proposal, the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			parentage of the child, … **Subd. (h)(1):** Suggested change for consistency (see Fam. Code, § 7555) -- Whether that person is the ~~biological~~ genetic parent of the child; and **Form FL-100** **Page 1, item 2a:** Change "and" to "or." *(For a divorce, at least one person in the legal relationship described in items 1a ~~and~~ or 1c must comply with this requirement.)*	The committee is proposing to modify the language in 2a in the form to increase clarity.
			Page 1, item 4e: Insert space after "copy." … A copy [] is [] is not attached.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime." (See, e.g., JV-555, p. 2.) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, which means that if I lie on the form, I am	The committee does not recommend this change.

	Commenter	Position	Comment	Committee Response
			committing a crime. **Form FL-120** **Page 1, item 2a:** Change "and" to "or." *(For a divorce, at least one person in the legal relationship described in items 1a ~~and~~ or 1c must comply with this requirement.)* **Page 1, item 4e:** Insert space after "copy." … A copy [] is [] is not attached. **Page 2, item 5c:** Initial capital – Divorce. (1) [] ~~d~~Divorce **Page 3**, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime." (See, e.g., JV-555, p. 2.) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, which means that if I lie on the form, I am committing a crime. **Form FL-170** The fourth bullet point on page 8 of the	The committee agrees with this suggestion and has modified the language in item 2a into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend this change.

	Commenter	Position	Comment	Committee Response
			invitation provides: "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."	The committee recommends that the caption remain as solely the Petitioner and Respondent.
			It appears that the only reference to "Other Parent/Party" on the FL-170 is in the case caption. It seems odd to include additional parties in the case caption on this form, when they are not included on the Petition (FL-100) or Judgment (FL-180). In addition, the equivalent form used in parentage actions (FL-230) does not include "Other Parent/Party" in the case caption.	The committee recommends that the section for "Other" on the Petition be used for this scenario.
			It seems beneficial to add or modify language regarding child support payable for children who are not minors, but for whom child support is still due under FC § 3901. Additionally, a spot on the Petition where such child could be listed might be helpful.	The committee does not recommend this change and recommends that the section for "Other" on the Petition be used for this scenario.
			It may be helpful to add language to item 9 indicating that the social security numbers on the VDOP should be redacted before it is attached – the court has seen many VDOPs included that were not redacted, despite the warning at the bottom of the Petition and	The committee does not recommend this change, but recommends that including the voluntary declaration of parentage or paternity be made optional on this form.

	Commenter	Position	Comment	Committee Response
			Response.	
			Page 1, item 2: Insert space between "to" and "do."… unless I am ordered by the court to do so.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 3: Change "Petitioner" to "Petition" and change "Respondent" to "Response."	
			All the information in the [] amended [] Petition~~er~~ [] Respon~~dent~~se is true and correct.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, items 4b(2) and 4c(2): Insert space between "partnership" and "rights."	
			… a written agreement regarding their property and their marriage or domestic partnership rights, including support …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 5: Insert space between "disclosure" and "*(check a, b, or c)*."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Declaration of disclosure *(check a, b, or c):*	
			Page 1, item 5a: Suggested change for simplicity and consistency with item 4.c.(1).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Both ~~the petitioner and respondent~~ parties have filed …	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Page 1, item 5b: Insert space between "form" and "FL-140." … receipt of the final Declaration of Disclosure (form FL-140) from the respondent.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 5c: Correct typo. … service of the summons on respondent was d~~a~~one by publication …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 5d: Insert comma before "or" and insert "in" before "another, separate stipulation." A waiver provision … is contained on the … (form FL-144), in the settlement agreement or proposed judgment<u>,</u> or <u>in</u> another, separate stipulation.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 6c: Insert "the" before "current schedule." The current custody and visitation (parenting time) previously ordered in this case, or <u>the</u> current schedule is (*specify*):	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 6d: Suggested changes –	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			The f~~F~~acts ~~in~~ that support ~~of~~ the requested judgment are (~~I~~*in a default case, state your reasons below*):	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 8: Insert space between "Support" and "(If."	
			Spousal, Partner, and Family Support *(If a support order or attorney fees are*	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 8d: Delete period after "8d."	
			[] attached declaration (Attachment 8d~~.~~)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, item 9b: Suggested changes --	
			The ~~W~~written agreement of the parties regarding parentage is attached here (Attachment 9b) or to the proposed *Judgment* (form FL-180).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, item 10: Insert period at end of sentence.	
			… in the proposed *Judgment* (form FL-180).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, item 10: Suggested changes –	
			The facts in support of this request are on *Request for Attorney's Fees and*	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Costs Attachment (form FL-319). **Page 3, item 12:** Delete indentation of second line. Use lower case for "proceedings." Suggest inserting "the" and deleting "of marriage." [] Petitioner [] Respondent requests restoration of the former name as set forth in the proposed *Judgment* (form FL-180) (*Pproceedings for dissolution ~~of marriage~~ or nullity of marriage only*). **Page 3, item 13:** Suggested changes – ~~There are i~~Irreconcilable differences ~~that~~ have led to the irremediable breakdown … **Page 3, item 15:** Suggested changes – If this is a dissolution of a marriage or ~~of a~~ domestic partnership created **…** **Page 3, Items 16 and 18:** Change "for" to "of." I ask that the court grant the request for a judgment ~~for~~ of dissolution of … I ask that the court grant the request for a judgment ~~for~~ of legal separation …	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them in into the revisions that it is recommending for comment.

	Commenter	Position	Comment	Committee Response
			Page 3, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime." (See, e.g., JV-555, p. 2.)	The committee does not think that adding this language is necessary.
			Form FL-200	
			Comment: Consideration should be given to requiring the petitioner to file one form FL-200 for each child if there is more than one child in the case. As currently drafted, the form does not allow the court to make differing parentage, custody, and visitation orders for individual children in multi-child families when it is appropriate to do so (see items 7 and 8). If this requirement is adopted, many of the suggested changes below will not be necessary, e.g., changing "child" to "child(ren)." Alternatively, consider whether the information requested in item 8 should instead be provided on form FL-341, *Child Custody and Visitation (Parenting Time) Order Attachment.*	The committee is concerned that this will increase difficulty by requiring multiple filings and filing fees, and thus, will not make this suggestion at this time. Such a significant change would also require public comment.
			The form alternates between referring to "the child" and "the children." Propose that one term be used throughout or in the alternative "child(ren)."	The form has been revised to attempt to make this language more consistent.
			Page 1, item 1: Delete "is" to correct syntax for items 1a and 1b ("Petitioner ~~is~~ gave birth…"; "Petitioner ~~is~~ wants to be determined…").	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Page 1, item 1a: Correct typo – "the children listed in item 2." Change "children" to "child(ren)."	The "e" will be added. Children will follow the Judicial Council standard.
			Page 1, item 1b: Delete "as."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			wants to be determined ~~as~~ a parent of	
			Page 1, items 1b, 1c, and 5f: Change "child" to "child(ren)" and change "child's" to "child(ren)'s."	The form has been revised to attempt to make this language more consistent.
			Page 1, item 1c: Add "is" before "the"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 3b: Change "children" to "child(ren)."	The committee proposes to modify the language of the form to make this more consistent.
			Page 1, item 4a: Change "the county" to "this county."	The committee agrees with this suggestion and will incorporate it into the revisions it is recommending for adoption.
			Page 1, item 5 It may be helpful to add language indicating that the social security numbers on the VDOP should be redacted before it is attached. This would also apply to form FL-230 for item 5, and FL-273, for item 4(b).	The committee does not recommend this change due to space considerations.
			Page 1, items 5a and 5b: Change "child's" to	The committee proposes to modify the language

	Commenter	Position	Comment	Committee Response
			"child(ren)'s."	of the form to make this more consistent.
			Page 1, item 5c: Insert "a" before "Voluntary Declaration." Use lower case for "voluntary declaration of parentage or paternity" (see form FL-220, item 6a).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 5d: Suggested changes –	
			respondent ~~who~~ is the child(ren)'s parent and has failed to support the child(ren).	The committee has revised the form in order to make the language regarding children more consistent.
			Page 1, item 6: Delete second close parenthesis after "UCCJEA" -- *(UCCJEA)~~)~~*	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, first sentence: Suggest changing "requests" to "asks."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, items 7a, b, c: Change "children" to "child(ren)."	The committee proposes revising the form to have a more consistent use of the term children.
			Change "item 1" to "item 2."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, items 7c: Delete period in parenthetical	The committee agrees with this suggestion and has incorporated it into the revisions that it is

	Commenter	Position	Comment	Committee Response
			– "*(person in 7a-)*"	recommending for adoption.
			Page 2, item 8a: Change "children" to "child(ren)." Change "item 1" to "item 2." Change period at end of line to a comma or colon.	The committee proposes revising the form to have a more consistent use of the term children and has incorporated the other changes into the form that it is recommending for adoption.
			Page 2, items 8b and 8c: Insert "is awarded" before "to" – "… custody is awarded to …" **Query**: If the box next to "Other" is checked, should there be a blank line next to it where the court can identify the person who has custody?	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			Page 2, item 8d: Change "children" to "child(ren)."	The committee recommends that the form be modified to make the term children used more consistently.
			Page 2, item 8d (2): Query – Is "Reasonable visitation" too vague to be legally sufficient, or is it intentionally designed to delegate to the parties the authority to determine what is reasonable?	This was intentionally designed to allow the parties to choose this option when it is appropriate.
			Page 2, item 8d (3): Suggest changing "should have" to "has." … ~~should have~~ has the right to visit the children as follows:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 8e: Suggested changes – The ~~F~~facts in support of the requested	The committee agrees with this suggestion and

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			custody and visitation … orders are …	has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 9: Suggest inserting "must" before "be paid."	
			Reasonable expenses of pregnancy and birth must be paid by …	The committee recommends keeping the language on the form as it is currently stated.
			Page 2, item 10: Suggest changing "to" to "must."	
			a. Attorney fees ~~to~~ must be paid by …	The committee recommends keeping the language on the form as it is currently stated.
			b. … and other costs of the action … ~~to~~ must be paid by …	The committee does not agree with adding this additional language.
			Page 2, item 11: Suggested changes –	
			Child(ren)'s name(s) ~~be~~ are changed, … as follows *(specify old and new names)*:	The committee agrees with this suggestion and has incorporated with some modifications into the revisions that it is recommending for adoption.
			Page 2, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime." (See, e.g., JV-555, p. 2.)	
			I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, which means that if I lie on the form, I am committing a crime.	The committee does not agree with adding this additional language.
			Page 2, NOTICE**:** Insert space between	

	Commenter	Position	Comment	Committee Response
			"parent." and "Any …" … supplied by the other parent. Any party required to pay … **Form FL-220** **Page 1, item 2a:** Correct typo – "the children listed in item 2." Change "children" to "child(ren)." **Page 1, items 2b and 2d:** Change "child" to "child(ren)" and change "child's" to "child(ren)'s." **Page 1, item 2b:** Delete "as." wants to be determined ~~as~~ a parent of **Page 1, item 2c:** Add "is" be added before "not certain…" Change "biological" to "genetic." Change "children" to "child(ren)." **Page 1, items 3b, 4, 4b, 5a, 5b, 5c, 5d, 6c:** Change "children" to "child(ren)." **Page 1, item 4b:** Insert space between "started" and "in." **Page 1, item 7:** Delete second close parenthesis	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for comment. The committee has proposed a modification of the form to make the term children more consistent. The committee has proposed a modification of the form to make the term children more consistent. The committee proposes revising this language. Biological has been changed to be genetic. The committee has revised the language to make references to children more consistent. The committee has recommended revising the language of the form to make the term children more consistent. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and

	Commenter	Position	Comment	Committee Response
			after "UCCJEA" -- *(UCCJEA))*	has incorporated it into the revisions that it is recommending for adoption.
			Page 2, first sentence: Suggested changes for consistency with form FL-200, page 2. (Alternative option: Change form FL-200 to be consistent with form FL-220.) ~~The r~~Respondent requests ~~that~~ the court to make the ~~orders listed~~ determinations indicated below.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, items 8a, 8b, 8c, 9a, 9b, 9c, 9d, 9d(3): Change "children" to "child(ren)."	The committee is proposing recommendations to the form to make this more consistent.
			Page 2, item 8c: Delete period in parenthetical – *(person in 8a.)*	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 9: Query – Is there a reason why form FL-220 does not contain the line, "Facts in support of the requested custody and visitation (parenting time) orders are (*specify*): [] Contained in the attached declaration"? (See form FL-200, item 8e.)	The committee agrees that this would be an appropriate addition and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 9a: Change period at end of line to a comma or colon.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, items 9b and 9c: Insert "is awarded" before "to" – "… custody is awarded to …"	

	Commenter	Position	Comment	Committee Response
			Query: If the box next to "Other" is checked, should there be a blank line next to it where the court can identify the person who has custody?	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 9d(2): Query – Is "Reasonable visitation" too vague to be legally sufficient, or is it intentionally designed to delegate to the parties the authority to determine what is reasonable?	This is intentionally designed to allow the parties to determine what is reasonable when appropriate
			Page 2, item 9d(3): Suggest changing "should have" to "has." … ~~should have~~ has the right to visit the children as follows:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 10: Suggest inserting "must" before "be paid." Reasonable expenses of pregnancy and birth must be paid by …	The committee recommends retaining the current language of the form.
			Page 2, item 11: Suggest changing "to" to "must." a. Attorney fees ~~to~~ must be paid by … b. … and other costs of the action … ~~to~~ must be paid by …	The committee recommends retaining the current language of the form.
			Page 2, item 12: Suggested changes – Child(ren)'s name(s) ~~be~~ are changed, …	The committee recommends retaining the current language of the form.

	Commenter	Position	Comment	Committee Response
			as follows … **Page 2, sentence after item 14:** Suggested change for consistency with the language of the restraining order on the back of FL-210, which states when the restraining order takes effect against the respondent. I have read the restraining order on the back of the *Summons* (<u>form</u> FL-210) and I understand it applies to me when ~~this Petition is filed~~ <u>I am personally served with the *Summons* and *Petition* or when I waive and accept service</u>. **Page 2**, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Page 2,** NOTICE**:** Insert space between "parent." and "Any …" … supplied by the other parent. Any party required to pay … **<u>Form FL-230</u>** **Page 1, item 3:** For consistency with form FL-200, change "*Petition or Complaint to Establish Parental Relationship*" to "*Petition to Determine Parental Relationship*." For	The committee agrees that the statement is not accurate. It will be revised to go back to the current form which simply states that the respondent understands that the restraining order applies since the respondent is filing a response, and hence has been served or waived service. The committee does not recommend making this change. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			consistency with form FL-260, change "*Petition to Establish Custody and Support*" to "*Petition for Custody and Support of Minor Children*." **Page 1, item 4:** Insert "voluntary" before "declaration of parentage or paternity."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 6a: Suggested change for simplicity and clarity – … and I am ~~not~~ seeking ~~any~~ only the relief ~~not~~ requested in the petition.	The committee does not recommend making this change because the party can request less than what is on the petition.
			Page 1, item 7a: Correct typo – "Respondent"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 14: Change "*Establishment*" to "*Determination*" for consistency with revised form FL-235.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Form FL-235** **Page 1, items 2, 5, 7, 8**: Change "children" to	The committee does not recommend making this change. The committee is recommending revised language

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			"child(ren)."	to make the term "children" consistent.
			Page 1, item 5: Suggested changes – I understand that, if I admit ~~that~~ I am the parent of the child(ren) in this action, ~~that those~~ the child(ren) will be my child(ren) for legal purposes.	The committee is recommending revised language to make the term "children" consistent.
			Page 1, item 6: Suggested changes – I understand that I am admitting ~~that~~ I am the parent of the child(ren) named in the stipulation …	The committee is recommending revised language to make the term "children" consistent.
			Page 1, Interpreter's Declaration, items 1 and 2: Italicize "*Judgment*" (in name of form FL-250) and "*Advisement and Waiver of Rights*." 1. "… is unable to read or understand the *Judgment (Uniform Parentage—Custody and Support)* (form FL-250) and this *Advisement and Waiver of Rights* because" 2. "… 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*	The committee agrees with these suggestions and have incorporated them into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			(Uniform Parentage-- Custody and Support) (form FL-250) …" **Page 1, center footer:** Insert colon after "RE" for consistency – **RE:** **Form FL-250** **Page 1, items 2f(4) and 2g(4):** Insert "voluntary" before "declaration." **Page 1, item 2g(2)**: Change "*Establishment*" to "*Determination*." **Page 1, item 2g(4):** Change "paternity or parentage" to "parentage or paternity" for consistency. (See item 2f(4).) **Page 1, item 3:** Insert a third line for a third "Name:" in the event the court determines the child has a third parent pursuant to Family Code section 7612(c). **Page 1, item 4a(1):** The sentence does not logically follow the preceding phrase, which refers to "attached forms." Perhaps the item would make more sense if reorganized as follows:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. Agreed. 4 a. (1) will be revised to refer to the *Child Custody and Visitation Order Attachment* (form FL-341).

	Commenter	Position	Comment	Committee Response
			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~~1) [] *Stipulation ~~for~~ and Order for Child Custody and/or Visitation of Children* (form FL-355) (~~3~~2) [] Other *(specify):* [] The petitioner appeared without counsel and was advised of relevant rights. **Page 1, item 4a(1):** Correct title of form FL-355: *Stipulation ~~for~~ and Order for* … **Page 2, item 5f:** Suggested change – [] Attorney fees and costs are as stated in the ~~attachment~~ attached *Attorney's Fees and Costs Order Attachment* (form FL-346). **Form FL-260** **Page 1,** NOTICE**: Query** – Should "or domestic partnership" be inserted after	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is

	Commenter	Position	Comment	Committee Response
			"marriage or"?	recommending for adoption.
			NOTICE: This action will not terminate a marriage or <u>domestic partnership and will not</u> determine a parental relationship.	
			Page 1, item 1: Insert period after "Attachment 1."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Propose that item 1 be revised to include "Birthdate" in place of "Date of Birth" and to include "Age." This is consistent with other family law petitions (e.g. FL-100 & FL-200).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 2: Suggested change –	
			Choose at least one box below to ~~show the reason that~~ <u>explain why</u> you are using this form:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 2b: Insert "voluntary" before "declaration." Change "children" to "child<u>(ren)</u>."	The committee agrees with adding "voluntary" before "declaration."
			Page 1, item 2c: Insert "or children" after "child."	The committee is recommending revised language for this section.
			Page 1, item 2d: Suggested change –	
			Respondent and I have been determined to be the <u>child(ren)'s</u> parents in juvenile	The committee agrees with the suggestion and has

	Commenter	Position	Comment	Committee Response
			court or governmental child support case number:	incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 4: Query – If the box next to "Other" is checked, should there be a blank line next to it where the court can identify the person who has custody or visitation rights?	Agreed. Will add a new line for the party to identify the name of any "other."
			Page 1, item 4c: Suggested change –	
			[] The proposed schedule for visitation (parenting time) is as ~~follows:~~ stated in the attached *Child Custody and Visitation (Parenting) Application Attachment* (form FL-311.)	The check box for FL-311 will be moved to the bottom of the page to allow the parties to write in the visitation terms if the FL-311 is not required.
			~~[] See the attached form FL-311, *Child Custody and Visitation (Parenting) Application Attachment.*~~	
			Page 2, item 5b: Suggested changes –	The committee recommends that this be modified to say that each party will pay their own attorney fees.
			[] Each party will pay ~~own~~ the fees incurred by that party.	
			Page 2, verification: Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.)	The committee does not recommend adding this additional language.
			Page 2, sentence underneath signature lines**:**	The committee agrees with this suggestion and has incorporated it into the revisions that it is
			A blank *Response* … must be served on	

	Commenter	Position	Comment	Committee Response
			the respondent with a copy of this Petition. **Form FL-270** **Page 1,** NOTICE**: Query** – Should "domestic partnership and will not" be inserted after "marriage or"? **NOTICE: This action will not terminate a marriage or domestic partnership and will not determine a parental relationship.** **Page 1, item 1:** Insert period after "Attachment 1." Propose that item 1 be revised to include "Birthdate" in place of "Date of Birth" and to include "Age." This is consistent with other family law responses (e.g. FL-120 & FL-220). **Page 1, item 2:** Suggested change – Choose at least one box below to ~~show the reason that~~ explain why you are using this form: **Page 1, item 2b:** Insert "voluntary" before "declaration." Change "children" to "child(ren)." **Page 1, item 2c:** Insert "or children" after	recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. Agreed. Will add voluntary. The committee is recommending that the form be revised to use the term children consistently. The committee is recommending that the form be

	Commenter	Position	Comment	Committee Response
			"child."	revised to use the term children consistently.
			Page 1, item 2d: Suggested changes – Respondent and I have been determined to be the <u>child(ren)'s</u> parents in juvenile <u>court</u> or governmental child support case number:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, item 4: Query – If the box next to "Other" is checked, should there be a blank line next to it where the court can identify the person who has custody or visitation rights?	Agreed. Will add a new line for the party to identify the name of any "other."
			Page 1, item 4c: Suggested changes – [] The proposed schedule for visitation (parenting time) is as ~~follows:~~ <u>stated in the attached *Child Custody and Visitation (Parenting) Application Attachment* (form FL-311.)</u>	The check box for FL-311 will be moved to the bottom of the page to allow the parties to write in the visitation terms if the FL-311 is not required.
			~~[] See the attached form FL-311, *Child Custody and Visitation (Parenting) Application Attachment.*~~	
			Page 2, item 5b: Suggested changes – [] Each party will pay ~~own~~ <u>the</u> fees <u>incurred by that party.</u>	The committee recommends that the language be revised to state that each party will pay their own attorney fees.
			Page 2, verification: Suggest adding ", which means that if I lie on the form, I am committing	The committee does not recommend adding this additional language.

	Commenter	Position	Comment	Committee Response
			a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Form FL-272** **Page 1,** instructions: Although the fourth bullet point refers to form FL-611 "for information about completing a proof of service," neither these instructions nor those on form FL-611 direct the filer *to submit a proof of service to the court*. The filer also should be instructed as to when the proof of service must be submitted, e.g., before the hearing or at the hearing. **Page 1, item 1a**: Delete period after "Room.~~.~~" **Page 1, item 2:** Insert "form" before "FL-276." (See page 2 of form FL-276 for more information….) **Page 1, right footer**: Should cited statutes be in chronological order? "§§ ~~7646,~~ 7576, 7577, 7646 **Page 2, item 8:** Insert "that" after "request." I request that the court cancel … **Page 2, item 10:** Suggested change – (The marital presumption means the child is legally considered to be a child	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend adding this additional language. The committee agrees with this suggestion and

	Commenter	Position	Comment	Committee Response
			of the marriage 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~~.)	has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 11: Suggested change – I request that the court appoint a guardian ad litem for each child ~~subject to this motion~~ listed in item 8. …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, verification**:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.)	The committee does not think that adding this language is necessary.
			Form FL-273	
			Page 1, right footer: Should statutory citations be added here? (See right footer on page 1 of form FL-272.)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 4c(1): Suggested change – Fraud (~~I was kept in ignorance of the true facts by a~~Another person lied to me about the facts)	The committee does not recommend adding this additional language.
			Page 2, item 4c(2): Suggested change – Duress (I was threatened or mentally	The committee does not recommend adding this additional language.

	Commenter	Position	Comment	Committee Response
			coerced <u>into signing the declaration</u>)	
			Page 2, verification**:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.)	The committee does not think that adding this language is necessary.
			Page 2, signature line: Suggested change for consistency with form FL-272. (Also, no orders are requested on form FL-273.) (SIGNATURE OF ~~PERSON REQUESTING THESE ORDERS~~ <u>PARTY MAKING REQUEST</u>)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			<u>Form FL-274</u>	
			Page 1, boxed notice: Suggested change – **NOTICE: <u>IF A COURT HAS ORDERED YOU TO PAY CHILD SUPPORT,</u> YOU MUST CONTINUE PAYING SUPPORT WHILE THIS ACTION IS PENDING.**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, third paragraph: Suggested changes – (1) Within a two-year period ~~commencing with~~ <u>starting on</u> the date: (a) ~~on which~~ <u>when</u> the previously established father knew or should have	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and

	Commenter	Position	Comment	Committee Response
			known ~~of~~ a court judgment ~~that established~~ determined him ~~as~~ to be the father of the child (for example, the date a wage garnishment was served), or	has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			(b) ~~on which~~ when the previously established father knew or should have known ~~of the existence of~~ an action to ~~adjudicate the issue of~~ determine parentage had been filed (for example, the date ~~of service of~~ a summons was served),	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			(2) If you did not sign the declaration: (a) before the child's second birthday ~~within a two-year period commencing with the date of the child's birth~~, (b) 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 (c) within six months of the entry of a court order or judgment for child custody, visitation, or support based on the declaration.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			(3) If the declaration was signed before January 1, 2020 and you signed the voluntary declaration: (a) before the	The committee agrees with this suggestion and has incorporated it, with minor alterations, into

	Commenter	Position	Comment	Committee Response
			child's second birthday ~~within a two-year period commencing with the date of the child's birth~~, (b) 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 (c) within six months of the entry of a court order or judgment for child custody, visitation or support based on the declaration.	the revisions that it is recommending for adoption.
			(4) If the declaration was signed after January 1, 2020 and you signed the voluntary declaration: within ~~a two-year period commencing with~~ the two years after the effective date of the ~~voluntary~~ declaration. (If both parents were 18 years of age or older when they signed the declaration, this is the date that the declaration was filed with the Department of Child Support Services.)	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Page 1, right footer: Correct typo: 7577~~5~~. Should cited statutes be in chronological order? "§§ ~~7646,~~ 7576, 7577, 7646	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2: Suggested changes – The parentage judgment is based on genetic ~~tests~~ testing that ~~were~~	The committee agrees with this suggestion and has incorporated it, with minor alterations, into

	Commenter	Position	Comment	Committee Response
			~~conducted~~ was done before the judgment and that indicated the previously established father is the ~~biological~~ genetic father of the child. A copy of t~~T~~he completed motion and a blank Response … must be served … However, the court may order your participation in genetic testing. If the previously established father is found not to be the ~~biological~~ genetic 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~~ to reimbursement of any support paid before ~~the granting of~~ the motion was granted. **Form FL-276** **Page 1,** instructions: Suggested change – ~~Complete~~ Use this form if you do not agree … **Page 1, item 1**: Suggested changes –	the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee does not recommend using this revised language as litigants may believe they can just "use" the form without actually "completing" it first.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			1. Information about the judgment of parentage ~~listed~~ provided in the motion (item 6 on form FL-272):	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			a. I agree with the information ~~listed~~ provided …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			b. I do not agree with the information ~~listed~~ provided …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, right footer: **Query** -- Should cited statutes be in chronological order?	
			"§§ ~~7646,~~ 7576, 7577, 7646	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 7: Change "request" to "response."	
			The facts in support of this ~~request~~ response are …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 2, item 7e: Suggested changes –	
			There is a voluntary declaration of parentage or paternity, and there is no basis to cancel it (or set it aside).	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Page 2, item 7f: Suggested changes –	
			Genetic testing ~~was conducted~~ done before the judgment ~~that~~ indicated that the previously established father is the ~~biological~~ genetic father of the child.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Page 2, verification**:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.)	The committee does not think that adding this language is necessary.
			Page 2, signature line: Suggested change for consistency with form FL-272 – (SIGNATURE OF PARTY MAKING ~~REQUEST~~ RESPONSE)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, boxed instructions: … and the local child support agency if ~~they are~~ it is providing services for the children in this case.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, item 1: ~~At the time of service~~ When I served this response, I was at least 18 years of age …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 3, verification**:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.)	The committee does not think that adding this language is necessary.
			Page 3, center footer: Insert "RESPONSE TO" at beginning of title. RESPONSE TO NOTICE OF MOTION TO	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE **Form FL-278** **Page 1, item 1e:** Suggested changes – Child(ren) present *(name(s)):* Attorney(s) present *(name(s)):* **Page 1,** right footer: **Query** -- Should cited statutes be in chronological order? "§§ ~~7646,~~ 7576, 7577, 7646 **Page 2, item 6e:** Suggested change for consistency – The fact that the ~~biological~~ genetic father of the child … **Page 3, item 7g:** Suggested change for consistency – … the identity of, or get support from, the ~~biological~~ genetic father *(specify):* **Page 3, item 8:** Suggested change for consistency – If this order ~~vacates~~ cancels or sets aside a voluntary declaration …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Form FL-280 **Page 1, item 1a**: Delete period after "Room~~.~~" **Page 2, item 8a:** Insert comma after "separation" and delete comma after "or." **Page 2, item 10a(1):** Suggested change – Fraud (~~I was kept in ignorance of the true facts by a~~Another person lied to me about the facts) **Page 2, item 10a(2):** Suggested change – Duress (I was threatened or mentally coerced into signing the declaration) **Page 2, item 10b:** Suggested change for consistency with item 10a and check box for "Contained in the attached declaration." ~~Explain t~~The facts that support my~~our~~ request are: **Page 2, verification:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Form FL-281**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not think that adding this language to item 10 is necessary, but did include the suggestion in the instructions (form FL-281). The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not think that this proposed revised language is necessary.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Page 1: Suggested changes – You must file the completed form FL-280 ~~*Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity*~~ and attachments with the court clerk. If you cannot afford to pay the filing fee, ~~contact~~ ask the court clerk ~~to obtain~~ for forms to apply for a waiver of court fees. If you need ~~assistance~~ help completing this form … Provide an original form FL-280 ~~*Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity*~~ and attachments plus at least three copies for filing. The *Information Sheet for Service of Process* (form FL-611) ~~gives more information about serving~~ tells you how to serve your request. Serve one copy of the completed form FL-280 on each of the people (besides you) who signed the voluntary	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			declaration of parentage or paternity, Serve another copy of the ~~request~~ completed form FL-280 on the local child support agency if that office is providing services in the case. ~~Instructions for completing~~ How to complete Form FL-280 (*type or print in ink*)	
			Page 2: Comment – Given the heading at the top of the page ("**Instructions** for Numbered Paragraphs"), it seems unnecessarily repetitive to use "Instructions for" before each of the items. I suggest deleting "Instructions for" in all, e.g., ~~Instructions for i~~Item 1.	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.
			~~**Instructions for i**~~**tem 1:** Insert period after "dept" or spell out "department." The court clerk will fill in the date, time dept., or court address …	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.
			~~**Instructions for i**~~**tems 3-4:** Change "sooner" to "earlier." Change "assistance" to "help." … you can ask the court for a ~~sooner~~ earlier court date. If you need ~~assistance~~ help, contact …	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.
			~~**Instructions for i**~~**tem 10a:** Suggested changes	

	Commenter	Position	Comment	Committee Response
			(1) Check this box if you were a victim of fraud, which means ~~and~~ someone ~~kept you in ignorance of the true~~ lied to you about the facts. (2) Check this box if you were under duress, which means you ~~and~~ were threatened or mentally coerced ~~regarding the~~ into signing ~~of~~ the voluntary declaration. (3) Check this box if you made a material mistake of fact, which means you ~~and~~ thought that the facts were different from what they really are or were. (4) Check this box if the voluntary declaration is void because of a reason not stated above and state the reason. ~~(4)~~(5) Check this box if someone committed perjury, which means they ~~and~~ lied when the voluntary declaration was signed. **Page 3:** **~~Instructions for i~~tem 10a:** Suggested changes for simpler language and consistency -- ~~(5)~~(6) Check this box if any of the	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for

	Commenter	Position	Comment	Committee Response
			following statements describes ~~the circumstances that existed~~ what happened at the time you signed, ~~or~~ were unable to sign, or failed to sign the voluntary declaration of parentage or paternity: • You ~~did not pay attention to the consequences of not signing~~ ignored what would happen if you failed to sign the voluntary declaration of parentage or paternity, and ~~your lack of attention~~ you could not have ~~been~~ avoided this by using ~~with~~ reasonable care and good sense; • You were unexpectedly placed in the situation of ~~not~~ being unable or failing to sign the voluntary declaration of parentage or paternity, and you could not have avoided ~~the situation~~ this by using ~~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~~ this by using reasonable care and good sense.	adoption.

	Commenter	Position	Comment	Committee Response
			~~(6)~~(7) Check this box if you have other reasons. . . **Query**: Need instructions for the box in (7) ["Other"]? *(**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) only because of fraud, duress, or material mistake of fact – that is, you checked box (1), (2), or (3).)* **~~Instructions for i~~tem 10b:** Suggested changes for simpler language and consistency -- 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~~ despite the delay. If you need more space, ~~you may~~ attach additional sheets~~.~~ and c~~C~~heck the box ~~labeled~~ next to "Contained in the attached declaration." ~~if you are attaching a declaration or additional sheets explaining your reasons for this~~	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			~~request.~~ ~~This motion~~ Your request must be filed within the ~~following~~ time frame~~s~~ that applies to you: • If you did not sign the declaration: (1) before the child's second birthday ~~within a two-year period commencing with the date of the child's birth~~, (2) 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 (3) 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: (1) before the child's second birthday ~~within a two-year period commencing with the date of the child's birth~~, (2) 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 (3) within six months of the entry of a court order or judgment for child custody, visitation, or support	

	Commenter	Position	Comment	Committee Response
			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 two years after the effective date of the ~~voluntary~~ declaration. (If both parents were 18 years of age 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 on the blank lines at the bottom of page 3. … If you need ~~additional assistance~~ more help with this form, contact a lawyer or the family law facilitator in your county. **Form FL-285** **Page 1, INSTRUCTIONS**: Suggested changes – ~~Complete~~ Use this form if you do not agree with the ~~requests~~ statements made in the … (form FL-280) filed in this	The committee does not recommend using this revised language as litigants may believe they can just "use" the form without actually "completing"

	Commenter	Position	Comment	Committee Response
			case. **Page 1, item 2:** Delete "for." Request ~~for~~ to cancel (set aside) … **Page 1, verification**: Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Page 1, signature line**: Change "MAKING" to "RESPONDING TO." (SIGNATURE OF PARKING ~~MAKING~~ RESPONDING TO REQUEST) **Page 2:** Suggested changes – 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~~ page 1 of this form. If you do have a lawyer representing you, your lawyer should complete ~~the responsive declaration~~ it. If you are receiving services from the local child support agency, you should	it first. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not think that adding this language is necessary. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			contact ~~them~~ it right away. After you complete page 1 of this form, ~~Y~~you must file ~~the completed responsive declaration~~ it and any attachments ~~(if any)~~ with the court clerk at least 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~~ that form. If you need ~~assistance~~ help 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~~ of this form plus three copies for filing. ~~Keep~~ Use the three copies ~~of the filed responsive declaration~~ for service of process. 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* (form FL-330 or FL-335) with the court clerk. …	

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			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, and email address 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~~)~~. 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~~)~~. 1. Check the box to tell the court if you agree or do not agree with the information listed about the voluntary	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			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~~)~~. You must date the form, print your name, and sign the form under penalty of perjury <u>on the blank lines at the bottom of page 3</u>. … If you need ~~additional assistance~~ <u>more help</u> with this form, contact a lawyer or the family law facilitator in your county. **<u>Form FL-290</u>** **Item 8:** Insert period at end of sentence. **<u>Form FL-300-INFO</u>** **Page 1, item 2**: Suggested changes – For information about how to write up your agreement~~,~~ <u>and</u> get it approved by the court~~,~~ and filed in your case, … ~~speak with~~ <u>talk to</u> an attorney, or get help … **Page 1, item 3c**: Delete "this form" for consistency with items 3d and 3f.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend making this change. The committee agrees with this suggestion and has incorporated it into the revisions that it is

	Commenter	Position	Comment	Committee Response
			If you want child support, you need ~~this form~~:	recommending for adoption.
			Page 1, item 3d: Add "and" after "*Income and Expense Declaration*."	Since the FL 157 is not a mandatory form, the committee, the committee does not recommend that the language be changed to say that it must be included.
			… *Income and Expense Declaration* and	
			Page 1, item 3e: Add "*Attachment*" to title of form.	
			FL-158, *Supporting Declaration for Attorney's Fees and Costs* *Attachment* (or provide the information in a declaration)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Page 1, items 3g and 3h: Delete "form" for consistency with items 3d and 3f.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			If you …, you need ~~form~~:	
			Page 2, item 4: Suggested changes –	
			Caption: ~~Complete the top portion with~~ In the top box, print your name, address, ~~and~~ telephone number, and e-mail address if you have one.~~, and~~ In the second box, print the court address. ~~Next~~ In the third box, print ~~write~~ the names of the Petitioner, Respondent, or Other Parent/Party. (You must use the	The committee agrees with these suggestions and has incorporated them with minor changes into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			party names as they appear in the petition that was originally filed with the court). ~~Then, write the case number.~~ In the ~~next section~~ fourth box, check "CHANGE" if you want to change an existing order. Check "TEMPORARY EMERGENCY ~~(EX PARTE)~~ ORDERS" if you are asking ~~that~~ the court to make emergency orders that will be effective until the hearing date. Then, check all the boxes that apply to the orders you are requesting. In the box to the right, write the case number. **Item 2:** Leave this blank. The court clerk will fill in the date, time, and ~~location~~ place of the hearing. **Items 4-5:** Leave these blank. The court will complete them if ~~the orders are granted~~ it orders a hearing. **Page 3, item 9:** Change "nondomestic" to "not domestic." (~~non~~not domestic violence restraining orders) **Page 3, item 14:** Suggested changes – … means that your "server" places copies of all the ~~documents~~ papers (~~and~~	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and

	Commenter	Position	Comment	Committee Response
			including 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~~ the party has one). The server must be 18 years of age or ~~over~~ older and live or work in the county where the mailing took place. *Important*! ~~For~~ If you have questions about personal service or service by mail, talk ~~with~~ to a lawyer or check with **Page 4, item 15, right column**: Suggested changes – You have verified the other party's current ~~residence~~ home or office address. (You may use *Declaration Regarding Address Verification* (form FL-334).) **Form FL-600** **Page 1, caption, title of form: Query –** Why are there blank lines before "SUPPLEMENTAL COMPLAINT" AND "AMENDED COMPLAINT"? Aren't the checkboxes sufficient? Or are the blank lines for "1st,"	have incorporated then into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The blank spaces are for 1st, 2nd, etc.

	Commenter	Position	Comment	Committee Response
			"2nd," etc.? **Page 1, boxed advisement:** Suggested changes – … This lawsuit says you and the other parent are the parents of each child named in this *Complaint* and ~~that~~ the obligor (the parent asked to pay support) may be required to pay support. … If you do not file an *Answer*, the proposed *Judgment* will become a final determination that you are the parent and/or 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 on pages 4-6 for more information. **Pages 1-6, center footer: Query –** Should footer be revised to match title in caption? SUMMONS AND COMPLAINT, ~~OR~~ SUPPLEMENTAL COMPLAINT, OR AMENDED COMPLAINT REGARDING PARENTAL OBLIGATIONS **Page 2, item 2a: Query** – Are two blanks for	Because the rest of the proposed changes to this form would be important substantive changes and go beyond the scope of the proposal (which was to primarily to change "Voluntary Declaration of Paternity" to "voluntary declaration of parentage or paternity," change "blood tests" or "genetic tests" to "genetic testing," and to make forms gender inclusive where possible) the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			the names of parents sufficient? There may be more than one father or mother if more than one child is listed in item 1, or there may be three parents pursuant to Family Code section 7612(c). **Page 2, items 2a, 2b:** Change "children" to "child(ren)." **Page 2, item 2b: Query** – Should "voluntary" be inserted before "declaration of parentage"? **Page 2, item 3b:** Suggested change – 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 names of children)*: **Page 2, item 3c:** Suggested changes – A ~~J~~judgment of parentage has ~~previously~~ been entered in … **Page 3, center footer:** Fix font size on "OBLIGATIONS." **Page 4, 1st par.:** Delete close parenthesis at end of sentence. If you do not like the recommended	

	Commenter	Position	Comment	Committee Response
			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~~)~~. **Page 4, 2nd and 3rd pars.:** Suggest changing "assistance" to "help" and changing "assisted" to "helped." **Page 4, 3rd par.:** Suggested changes – The family law facilitator is a neutral person who~~se services are available to~~ can help any ~~person~~ party who is NOT represented by an attorney. **Page 5,** NOTICE TO BOTH PARENTS: Suggested changes – The local child support agency has sued both of you to determine whether you are the parents of the children listed in the *Complaint* (on page 1) and/or if one or both of you should be ordered to pay child support. The ~~local child support~~ agency does not represent any ~~individual~~ person in this lawsuit, including either parent or the children. Carefully read this statement and the other papers that you received.	

	Commenter	Position	Comment	Committee Response
			You have the right to be represented by a lawyer. If you claim ~~dispute that~~ you are not 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. … 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, or at http://www.courts.ca.gov/documents/fl610.pdf. The family law facilitator can ~~assist~~ help you ~~in~~ fill~~ing~~ out the *Answer* form. … whether or not you ~~obtain~~ have an attorney. **Going to Court** [Roman, not italic] 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~~	

	Commenter	Position	Comment	Committee Response
			denies the parentage … **Earnings Assignment** All orders for support must contain an earnings assignment. If you are ~~obligated~~ ordered 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. **Page 6:** Suggested changes – 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 court enters the initial support order or medical support order ~~is entered by the court~~. … Either parent may go to court to modify (change) the court order. The ~~local child support~~ agency cannot bring proceedings to establish or modify custody, visitation, or restraining	

	Commenter	Position	Comment	Committee Response
			orders. … but must first notify the local child support agency as required by law. The ~~local child support~~ agency ~~is allowed~~ then has 30 days to ~~determine~~ decide whether ~~or not~~ a parent will be permitted to ~~proceed~~ go ahead 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~~ that 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 with custody receives public assistance, the local child support agency may agree to settle any parentage or support issue in this lawsuit without providing advance	

	Commenter	Position	Comment	Committee Response
			notice to the ~~custodial~~ person with custody. A child support agency may not settle any child support issue without the consent of any parent who ~~is an applicant~~ applies for child support services and who does not receive public assistance. The local child support agency ~~is required~~ must, under section 466(a)(13) of the Social Security Act, ~~to~~ place in the child support records ~~pertaining to child support~~ the social security number of any ~~individual~~ person who is subject to a divorce decree, support order, or parentage determination or acknowledgment. This information is ~~mandatory~~ required and will be kept on file at the ~~local child support~~ agency. Your family law facilitator ~~is available to~~ can help you with any questions you may have about the above information. You can reach your family law facilitator by telephone at: **Form FL-610** **Page 1, caption (and center footers for all pages): Query –** Should title of form be	Because these proposed changes to this form would be important substantive changes and go

	Commenter	Position	Comment	Committee Response
			revised for consistency with form FL-600? ANSWER TO COMPLAINT, ~~OR~~ SUPPLEMENTAL COMPLAINT, OR AMENDED COMPLAINT REGARDING PARENTAL OBLIGATIONS **Page 1, item 2:** Suggested change – I request genetic testing to determine parentage ~~be done for~~ of all children … **Page 1, item 4:** Suggested change – I disagree with the proposed judgment (form FL-630) for the following reasons *(specify)*: **Page 2, verifications:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Page 2, advisement at bottom of page:** Delete unnecessary commas and final close parenthesis. 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	beyond the scope of the proposal (which was to primarily to change "Voluntary Declaration of Paternity" to "voluntary declaration of parentage or paternity," change "blood tests" or "genetic tests" to "genetic testing," and to make forms gender inclusive where possible) the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle. The committee does not think that adding this language is necessary. Because the rest of the proposed changes to this form would be important substantive changes and go beyond the scope of the proposal (which was to primarily to change "Voluntary Declaration of Paternity" to "voluntary declaration of parentage or paternity," change "blood tests" or "genetic tests" to "genetic testing," and to make forms gender inclusive where possible) the committee

	Commenter	Position	Comment	Committee Response
			order will become a final order of the Court.~~)~~ **Page 3, 1st par.**: Suggested change if title of form is changed to match form FL-600 – Please follow these instructions to complete the *Answer to Complaint*, ~~*or*~~ *Supplemental Complaint, or Amended Complaint Regarding Parental Obligations* (form FL-610) if you do not have an attorney to represent you. ~~Your attorney, i~~If you have one, your attorney should complete this form. **Page 3, 2nd par.**: Suggested changes – … If you cannot afford to pay the filing fee, ~~contact~~ ask the court clerk ~~to obtain~~ for the forms you need to apply for a waiver of court fees. **Page 3, 3rd par.**: Suggested changes – ~~Upon receipt of~~ When the local child support agency receives your filed *Answer*, ~~the local child support agency~~ it will set a court hearing on this matter. **Page 3, 4th par.**: Suggested change – INSTRUCTIONS FOR COMPLETING	believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			THE ANSWER FORM (TYPE OR PRINT ~~FORM~~ IN BLACK INK): **Page 3, numbered par. 2**: Suggested changes … The local child support agency will tell you when and where to go for the test, and~~. 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 are the parent of the child(ren), you may have to repay this cost to the local child support agency. **Page 3, numbered par. 5**: Suggested change ~~You must l~~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. … **Form FL-615** **Page 2, item 3e(6):** Suggested changes – … It ~~will~~ also will 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	Because the proposed changes to this form would be important substantive changes and go beyond the scope of the proposal (which was to primarily to change "Voluntary Declaration of Paternity" to "voluntary declaration of parentage or paternity," change "blood tests" or "genetic

	Commenter	Position	Comment	Committee Response
			the supported person or child. The child support order ~~starts~~ goes into effect again on the first day of the month after the person is released from jail, prison, or an institution. **Page 5, items 1, 2, 5, 6a, 7, 10:** Change "children" to "child(ren)." **Page 5, item 6a:** Suggested changes – I understand that I ~~will have the duty to~~ must obey the support order … **Page 5, item 6b:** Suggested changes – 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~~ it is assigned to collect the support. **Page 5, item 7:** Suggested changes – I understand that I must ~~keep~~ provide health insurance coverage for the ~~minor~~ child(ren) if … **Page 5, item 10:** Suggested change – I UNDERSTAND THAT IF I WILLFULLY FAIL TO SUPPORT	testing," and to make forms gender inclusive where possible) the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

	Commenter	Position	Comment	Committee Response
			MY CHILD(REN), ~~CRIMINAL PROCEEDINGS MAY BE INITIATED AGAINST ME~~ I AM COMMITTING A CRIME. **Page 5, item 11:** Suggested changes – I understand that any support I owe may be collected from any of my property~~.~~ ~~This collection may be made~~ including by ~~intercepting~~ seizing money ~~owed~~ paid 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 **Form FL-686** **Page 2, item 6:** Suggest adding ", which means that if I lie on the form, I am committing a crime" at the end of the sentence. (See, e.g., JV-555, p. 2.) **Form FL-694** **Items 1, 2, 5, 6a, 7, 10:** Change "children" to "child(ren)." **Item 2:** Suggested change (see, e.g., form FL-	The committee does not think that adding this language is necessary. Because the proposed changes to this form would be important substantive changes and go beyond the scope of the proposal (which was to primarily to change "Voluntary Declaration of Paternity" to

	Commenter	Position	Comment	Committee Response
			615) – … decide how much ~~(unpaid support)~~ I owe for arrearages (unpaid support). **Item 6a:** Suggested changes – I understand that I ~~will have the duty to~~ must obey the support order … **Item 6b:** Suggested changes – 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~~ it is assigned to collect the support. **Item 7:** Suggested changes – I understand that I must ~~keep~~ provide health insurance coverage for the ~~minor~~ child(ren) if … **Item 10:** Suggested change – I UNDERSTAND THAT IF I WILLFULLY FAIL TO SUPPORT MY CHILD(REN), ~~CRIMINAL PROCEEDINGS MAY BE INITIATED AGAINST ME~~ I AM COMMITTING	"voluntary declaration of parentage or paternity," change "blood tests" or "genetic tests" to "genetic testing," and to make forms gender inclusive where possible) the committee believes public comment should be sought before they are considered for adoption. The committee will consider these suggestions during the next rules cycle.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			A CRIME. **Item 11:** Suggested changes – I understand that any support I owe may be collected from any of my property. ~~This collection may be made~~ including by ~~intercepting~~ seizing money ~~owed~~ paid 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 **Interpreter's Declaration: Query** – Should this section be changed for consistency with the Declaration of Person Providing Interpretation/Translation on page 5 of form FL-615? Note that this form does not include the language "I am competent to interpret or translate in the primary language indicated above."	
12.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee	AM	**SPR19-32: Family Law: Changes to Parentage Rules and Forms** **JRS Position:** Agree with proposed changes if modified. **Suggested modification(s):** **Rule 5.350** Page 10, In title of Item (b) and (d) – since they are using "canceled" in most other areas, we	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			should be consistent and use "cancel, set aside" where "set aside" is used. **Form FL-170** Page 18, Item 5.c. – Correct typo – "daone" to "done" Page 13 of 21 **Form FL-200** Page 21, Item 1.a. – Correct typo – "th" to "the" Page 21, Item 1 – Remove "is" from Petitioner is and then insert "is" in 1.c. so it reads "is the child…" Page 22, Item 7.c. Petitioner requests genetic testing to determine whether … □ Other (person in 7.a.) is the parent of the child listed in item 1. – Why would they list the other person in 7.a. if they wanted genetic testing to determine parentage? Replace "person listed in 7.a. with a line to write in the person's name. Page 22, Item 8.a. and 8.d.(3) – Need enough space after "Other" to be able to write a name □ Other _____ should have the right to visit the children as follows: **Form FL-220** Page 24, Item 2.a. – Correct typo – "th" to "the" Page 24, Item 2.c. and 2.d. – Insert "is" at beginning of section so it reads "The petitioner c. **is** not certain whether…	adoption The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. . The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			d. **is** the child or child's personal …" Page 24, Item 4.b. – Correct typo "startedin" to "started in" Page 25, Item 9.a. – Need enough space after "Other" to be able to write a name □ Other _____ is found to be the parent of the… Page 25, Item 9.d.(3) – Need enough space after "Other" to be able to write a name □ Other _____ should have the right to visit the children as follows: Page 25, Item 14 – Remove period after "Child Support" in the heading Page 25, Signature line – Change "Signature of Petitioner" to "Signature of Respondent" **Form FL-230** Page 26, Item 3 – Change the name of the form from "Petition to Establish" to "Petition to Determine" Page 26, Item 3 – Change name of form from "Petition to Establish Custody and Support" to "Petition for Custody and Support of Minor Children" Page 14 of 21 Page 26, Item 14 – Change the name of the form from Establishment to Determination **Form FL-235**	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			Missing page number – Match the footer to the header to "ADVISEMENT AND WAIVER OF RIGHTS RE: DETERMINATION OF PARENTAL RELATIONSHIP" to include colon in footer as well. **Form FL-250** Page 27, Item 2.g.(2) – Correct "Establishment" to "Determination" in title of form **Form FL-270** Page 32, Signature line – Change "Signature of Petitioner" to "Signature of Respondent" **Form FL-272** Page 34, Item 11. – (A guardian ad litem is an adult appointed by the court who represents the interest of a child.) – May give the impression that this would be an attorney representing the child. Change to – (**A guardian ad litem is an adult appointed by the court who advocates or speaks on behalf of the child.**) **Form FL-274** Page 37, Footer – Change Family Code § "75775" to "7577" **Form FL-276** Page 39, Item 1. – Add "(Item 6 of FL-272)" after "Information about the judgment of parentage listed in the motion:" – to clarify	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations,

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			what the form is referring to Page 39, Item 3. – (Same as above) (A guardian ad litem is an adult appointed by the court who represents the interest of a child.) – May give the impression that this would be an attorney representing the child. Change to – (**A guardian ad litem is an adult appointed by the court who advocates or speaks on behalf of the child.**) Page 40, Signature line – Change "Signature of Party Making Request" to "Signature of Party Responding to Request" Page 41, Item 2.a and b. – Need enough space after "Name of party or attorney served" and after "Name of local child support agency served" to write a name. Page 41, Footer – Add "Response to" to name of form Page 15 of 21 **Form FL-278** Page 43, Item 5, Both Subheadings – include "Cancel" with "Set Aside" **Form FL-281** Page 48, Instructions for item 1 – Add a period at end of dept Page 48, Instructions for item 10a.(3) – Add a period at end of sentence Page 49, Under the heading, "This motion must be filed within the following time frames:"	into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

SPR19-32

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)

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

	Commenter	Position	Comment	Committee Response
			For clarity, change "If you did not sign the declaration" to "If you are not one of the people who signed the declaration" **Form FL-285** Page 50, Item 1. – Add (Item 7 of FL-280) after "Information about the voluntary declaration of parentage or paternity listed in the request:" – to clarify what the form is referring to Page 50, Signature line – Change "Signature of Party Making Request" to "Signature of Party Responding to Request"	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

Item number: 31

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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 Advisory 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 advisory 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Family Law: Legislative Addition of New Category of Child Custody Evaluator

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.225; revise forms FL-325 and FL-326

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
July 17, 2019

Contact
Chris Cleary, Attorney
415-865-8792
christine.cleary@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending a rule of court and revising two Judicial Council forms for use in family law custody proceedings. These changes are necessitated by Assembly Bill 2296 (Stats. 2018, ch. 389), which added 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.

Recommendation

The Family and Juvenile Law Advisory committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 5.225 of the California Rules of Court to add "Professional clinical counselor qualified to assess couples and families" to the category of evaluators; and

2. Revise item 4a on *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (form FL-325) and on *Declaration of Private Child Custody Evaluator*

Regarding Qualifications (form FL-326) to include "professional clinical counselor qualified to assess couples and families."

The text of the amended rule and the revised forms are attached at pages 4–8.

Relevant Previous Council Action

Rule 5.225 of the California Rules of Court was adopted on January 1, 2002, 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.

Analysis/Rationale

This recommendation to amend rule 5.225 and revise forms FL-325 and FL-326 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.

Policy implications

This proposal does not raise any policy implications; it simply ensures that Judicial Council forms remain consistent with current law.

Comments

This proposal circulated for comment as part of the spring 2019 invitation-to-comment cycle from April 11 to June 11, 2019, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

The committee received four comments on this proposal. Three of the four commenters agreed with the proposal and one did not state a position. None of the commenters provided additional comments.

Alternatives considered

No alternatives were considered because the proposed changes are now statutorily required by Family Code section 3110.5(c)(5).

Fiscal and Operational Impacts

Implementation requirements, costs, and operational impacts will be minimal because 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 4
2. Forms FL-325 and FL-326, at pages 5–8
3. Chart of comments, at page 9
4. Link A: Assembly Bill 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 either 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

EVALUATOR'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, as follows:

   (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 as follows:

   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, as follows:
      (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 as follows:
   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)

SPRING 19-33

Family Law: Legislative Addition of New Category of Child Custody Evaluator (Amend Cal. Rules of Court, rule 5.225; revise forms FL-325 and FL-326)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Amy K. Guerra Judge (Family Court) Superior Court of Fresno County	A	No specific comments.	No response required.
2.	Orange County Bar Association By Deirdre Kelly, President	A	No specific comments.	No response required.
3.	Superior Court of Orange County By: Cynthia Beltran, Administrative Analyst	NI	No specific comments.	No response required.
4.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	No specific comments.	No response required.

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

Item number: 32

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Technical Changes Required by Sunsetting of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

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 27, Rules and Forms: Miscellaneous Technical Changes: Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2); "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy…." Specifically, multiple forms need revision to remove language regarding Family Code section 4007.5, which will sunset effective January 1, 2020.

If requesting July 1 or out of cycle, explain:

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Rules and Forms: Technical Changes Required by Sunsetting of Family Code section 4007.5

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-342, FL-350, FL-490, FL-530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary

Family Code section 4007.5, which currently provides that any money judgment or order for child support is automatically suspended and set to zero ($0.00) when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days, is due to sunset January 1, 2020. Legislation was proposed this session to remove the sunset date and make the measure permanent. However, the bill[1] unexpectedly lost support and is now inactive, meaning that this statute will expire as of January 1, 2020. The Family and Juvenile Law Advisory Committee recommends making the necessary corrections to certain forms to avoid causing confusion for court users, clerks, and judicial officers.

[1] Assem. Bill 1091 (Jones-Sawyer), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1091*.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Revise the following forms to remove references to relief currently available to child support obligors under Family Code section 4007.5, which will sunset effective January 1, 2020:

    - *Child Support Information and Order Attachment* (form FL-342),
    - *Stipulation to Establish or Modify Child Support and Order* (form FL-350),
    - *Application to Determine Arrears* (form FL-490),
    - *Judgment Regarding Parental Obligations* (form FL-530),
    - *Stipulation and Order* (form FL-625),
    - *Judgment Regarding Parental Obligations* (form FL-630),
    - *Findings and Recommendation of Commissioner* (form FL-665),
    - *Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676),
    - *Information Sheet: Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676-INFO),
    - *Order After Hearing* (form FL-687),
    - *Short Form Order After Hearing* (form FL-688), and
    - *Minutes and Order or Judgment* (form FL-692).

2. Make additional, minor technical changes to forms FL-342, FL-350, FL-490, FL-530, FL-625, FL-676, and FL-676-INFO as detailed below.

The revised forms are attached at pages 5–35.

Relevant Previous Council Action

Effective July 1, 2011, the Judicial Council revised forms FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, and FL-692 in response to Senate Bill 1355 (Wright; Stats. 2010, ch. 495), which enacted Family Code section 4007.5[2] (see Link A) and provided a process for formerly incarcerated or involuntarily institutionalized obligors to petition the court for forgiveness of child support arrears that accrued during their incarceration or involuntary institutionalization. Section 4007.5 contained a sunset date and expired accordingly on June 30, 2015.

Effective January 1, 2017, the Judicial Council revised forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692 in response to Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), which enacted a new

[2] All further statutory references are to the Family Code.

version of section 4007.5 that revived and expanded the relief previously available to child support obligors.

Analysis/Rationale

Removing references to section 4007.5

The changes to these forms are technical in nature and necessary to remove references to section 4007.5, which unexpectedly will sunset and be repealed effective January 1, 2020. Ten forms for child support orders or judgments reference this provision: FL-342, FL-350, FL-530, FL-615,[3] FL-625, FL-630, FL-665, FL-687, FL-688, and FL-692. Specifically, these forms all contain the following verbiage:

> 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.

The committee recommends removing this paragraph from these forms.

Additionally, three other forms used in connection with requesting a court hearing to determine support arrears—FL-490, FL-676, and FL-676-INFO—include language regarding the relief available under section 4007.5. The committee recommends that this language and references to the statute be removed from the support arrears forms.

Other technical changes

As mentioned above, the committee also recommends other minor technical changes to certain forms, including:

- Add a checkbox for "Judgment (form FL-250)" to page 1 of form FL-342;
- Add signature lines for "Other Parent" and "Attorney for Other Parent" to page 2 of form FL-350 and change the signature line for "Judge" to "Judicial Officer" because this form can also be approved by a child support commissioner[4];

[3] A concurrent report, *Family Law: Changes to Parentage Rules and Forms* (SPR19-32), www.courts.ca.gov/documents/spr19-32.pdf, recommends further revisions to form FL-615 and includes the revisions proposed herein. Thus, form FL-615 is not a part of this proposal.

[4] While the committee recognizes that this form currently uses the gendered terms "mother" and "father," revising this form to be gender inclusive would require substantive changes and the committee believes public comment should be sought before such revisions are made.

- Revise the checkbox for "Attorney" to "Other Parent/Party" on form FL-490 as a party, not an attorney, would sign this form;
- Correct references to renumbered statutes on form FL-530, from section 4921 to 5700.307 and section 5002 to 17404.1;
- Revise the interpreter declaration on page 4 of form FL-625 to be gender inclusive; and
- Change the titles of forms FL-676 and FL-676-INFO to remove references to the relief that will no longer be available, specifically removing "or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization."

Policy implications

This proposal has no major implications to any policies. It aligns with the Judicial Council's policy to keep forms consistent with related statutes.

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

The alternative not to make changes to the forms was not considered because the changes remove references to relief currently available under section 4007.5, which will sunset effective January 1, 2020.

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 FL-342, FL-350, FL-490, FL-530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692, at pages 5–35
2. Link A: Fam. Code, § 4007.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4007.5*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

CHILD SUPPORT INFORMATION AND ORDER ATTACHMENT

TO ☐ **Findings and Order After Hearing (form FL-340)**
☐ **Judgment (form FL-180)** ☐ **Judgment (form FL-250)**
☐ **Restraining Order After Hearing (CLETS-OAH) (form DV-130)**
☐ **Other** *(specify):*

DRAFT
Not approved by the Judicial Council

THE COURT USED THE FOLLOWING INFORMATION IN DETERMINING THE AMOUNT OF CHILD SUPPORT:

1. ☐ A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.
2. ☐ **Income**
   a. Each parent's monthly income is as follows:

	Gross monthly income	Net monthly income	Receiving TANF/CalWORKS
Petitioner/plaintiff:	$	$	☐
Respondent/defendant:	$	$	☐
Other parent/party:	$	$	☐

   b. Imputation of income. The court finds that the ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party has the capacity to earn:

   $ per and has based the support order upon this imputed income.

3. ☐ **Children of this relationship**
   a. Number of children who are the subjects of the support order *(specify):*
   b. Approximate percentage of time spent with petitioner/plaintiff: %
      Respondent/defendant: %
      Other parent/party: %

4. ☐ **Hardships**
   Hardships for the following have been allowed in calculating child support:

	Petitioner/ plaintiff	Respondent/ defendant	Other parent/ party	Approximate ending time for the hardship
a. ☐ Other minor children:	$	$	$	
b. ☐ Extraordinary medical expenses:	$	$	$	
c. ☐ Catastrophic losses:	$	$	$	

THE COURT ORDERS

5. ☐ **Low-income adjustment**
   a. ☐ The low-income adjustment applies.
   b. ☐ The low-income adjustment does not apply because *(specify reasons):*

6. ☐ **Child support**
   a. **Base child support**
   ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party must pay child support beginning *(date):* and continuing until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student, whichever occurs first, as follows:

Child's name	Date of birth	Monthly amount	Payable to *(name):*

Payable ☐ on the 1st of the month ☐ one-half on the 1st and one-half on the 15th of the month
☐ other *(specify):*

THIS IS A COURT ORDER.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

THE COURT FURTHER ORDERS

6. b. ☐ **Mandatory additional child support**

(1) Child-care costs related to employment or reasonably necessary job training

(a) ☐ Petitioner/plaintiff must pay: % of total or ☐ $ per month child-care costs.
(b) ☐ Respondent/defendant must pay: % of total or ☐ $ per month child-care costs.
(c) ☐ Other parent/party must pay: % of total or ☐ $ per month child-care costs.
(d) ☐ Costs to be paid as follows *(specify):*

c. **Mandatory additional child support**

(2) Reasonable uninsured health-care costs for the children

(a) ☐ Petitioner/plaintiff must pay: % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: % of total or ☐ $ per month.
(c) ☐ Other parent/party must pay: % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify):*

d. ☐ **Additional child support**

(1) ☐ Costs related to the educational or other special needs of the children

(a) ☐ Petitioner/plaintiff must pay: % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: % of total or ☐ $ per month.
(c) ☐ Other parent/party must pay: % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify):*

(2) ☐ Travel expenses for visitation

(a) ☐ Petitioner/plaintiff must pay: % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: % of total or ☐ $ per month.
(c) ☐ Other parent/party must pay: % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify):*

e. ☐ **Non-Guideline Order**

This order does not meet the child support guideline set forth in Family Code section 4055. *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) is attached.

Total child support per month: $

7. **Health-care expenses**

a. Health insurance coverage for the minor children of the parties must be maintained by the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party if available at no or reasonable cost through their respective places of employment or self-employment. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any health-care claims. 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.

b. ☐ Health insurance is not available to the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party at a reasonable cost at this time.

c. ☐ The party providing coverage must assign the right of reimbursement to the other party.

8. **Earnings assignment**

An earnings assignment order is issued. **Note:** The payor of child support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor's wages and for payment of any support not paid by the assignment.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

9. 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.

10. ☐ **Employment search order (Family Code § 4505)**
☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party is ordered to seek employment with the following terms and conditions:

11. **Other orders** *(specify):*

12. **Notices**
a. *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.
b. If this form is attached to *Restraining Order After Hearing* (form DV-130), the support orders issued on this form (form FL-342) remain in effect after the restraining orders issued on form DV-130 end.

13. **Child Support Case Registry Form**
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 order. Thereafter, the parties must notify the court of any change in the information submitted within 10 days of the change by filing an updated form.

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.

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:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER	CASE NUMBER:

1. a. ☐ Mother's net monthly disposable income: $
   ☐ Father's net monthly disposable income: $
   -OR-
   b. ☐ A printout of a computer calculation of the parents' financial circumstances is attached.
2. ☐ Percentage of time each parent has primary responsibility for the children: Mother: % Father: %
3. a. ☐ A hardship is being experienced by the mother: $ per month because of *(specify):*

   The hardship will last until *(date):*
   b. ☐ A hardship is being experienced by the father: $ per month because of *(specify):*

   The hardship will last until *(date):*
4. The amount of child support payable by *(name):* , referred to as "the parent ordered to pay support," as calculated under the guideline is: $ per month.
5. ☐ We agree to guideline support.
6. ☐ The guideline amount should be rebutted because of the following:
   a. ☐ We agree 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 adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.
   b. ☐ Other rebutting factors *(specify):*
7. The parent ordered to pay support must pay child support as follows beginning *(date):*
   a. BASIC CHILD SUPPORT

Child's name	Monthly amount	Payable to *(name):*

   Total: $ payable ☐ on the first of the month ☐ other *(specify):*
   b. ☐ In addition, the parent ordered to pay support must pay the following:
      (1) ☐ $ per month for child care costs to *(name):* *on (date):*
      (2) ☐ $ per month for health-care costs not covered by insurance to *(name):* *on (date):*
      (3) ☐ $ per month for special educational or other needs of the children to *(name):* *on (date):*
      (4) ☐ other *(specify):*
   c. **Total monthly child support** payable by the parent ordered to pay support will be: $
      payable ☐ on the first of the month ☐ other *(specify):*
8. a. Health insurance will be maintained by *(specify name):*
   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:

8. b. Any health expenses not paid by insurance will be shared: Mother: % Father: %

9. a. An earnings assignment order is issued.
   b. ☐ We agree that service of the earnings assignment be stayed because we have made the following alternative arrangements to ensure payment *(specify):*

10. 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 in arrears 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.

11. ☐ Travel expenses for visitation will be shared: Mother: % Father: %

12. ☐ We agree that we will promptly inform each other of any change of residence or employment, including the employer's name, address, and telephone number.

13. ☐ Other *(specify):*

14. We agree that we are fully informed of our rights under the California child support guidelines.

15. We make this agreement freely without coercion or duress.

16. The right to support
   a. ☐ has not been assigned to any county, and no application for public assistance is pending.
   b. ☐ has been assigned or an application for public assistance is pending in *(county name):*

If you checked b, an attorney for the local child support agency must sign below, joining in this agreement.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Notice: If the amount agreed to is less than the guideline amount, no change of circumstances need be shown to obtain a change in the support order to a higher amount. If the order is above the guideline, a change of circumstances will be required to modify this order. This form must be signed by the court to be effective.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF OTHER PARENT)

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 ATTORNEY FOR OTHER PARENT)

THE COURT ORDERS

17. a. ☐ The guideline child support amount in item 4 is rebutted by the factors stated in item 6.
   b. Items 7 through 13 are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this stipulation, all provisions of any previous orders made in this action will remain in effect.

Date:

JUDICIAL OFFICER

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. This can be a large added amount.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

APPLICATION TO DETERMINE ARREARS

Attachment to *Request for Order* (form FL-300)

☐ **Child support** ☐ **Spousal or partner support** ☐ **Family support** ☐ **Medical support**
☐ **Unreimbursed expenses** ☐ **Unreimbursed medical expenses**
☐ **Other *(specify):***

1. I ask that the amount of past due support payments (arrears) be decided in this case.

2. I have attached *(check all that apply):*
   a. ☐ a *Declaration of Payment History* (FL-420).
   b. ☐ a *Payment History Attachment* (FL-421).
   c. ☐ Other *(specify):*

3. ☐ I ask that the amount of past due support payments (arrears) be decided in this case.
   a. ☐ I have already paid ☐ some ☐ all of the support ordered. Proof of payment is attached.
   b. ☐ The children for whom support is to be paid were living with me full time for the period from to: . I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
   c. ☐ Other *(specify):*

4. ☐ I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed ☐ childcare expense ☐ medical expense. *(Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)*

5. ☐ I am asking the other person to pay ☐ attorney fees ☐ costs. *Income and Expense Declaration* (form FL-150) is attached.

6. Facts in support of the relief requested are *(specify):*

☐ 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:

DRAFT
Not approved by the Judicial Council

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

☐ Petitioner/Plaintiff ☐ Respondent/Defendant
☐ Other Parent/Party ☐ Other *(specify):*

NOTICE: This form must be attached to *Request for Order* (FL-300)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*FOR COURT USE ONLY*
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/PARTY:	
JUDGMENT REGARDING PARENTAL OBLIGATIONS (UIFSA) ☐ _____ **AMENDED** ☐ _____ **SUPPLEMENTAL**	CASE NUMBER:

1. a. ☐ **NOTICE: THIS IS A PROPOSED JUDGMENT. This *Judgment Regarding Parental Obligations (UIFSA)* will be entered by the court and will become legally binding unless you fill out and file the *Response to Uniform Support Petition (UIFSA)* (form FL-520) with the court clerk within 30 days of the date you were served with the *Summons (UIFSA)* (form FL-510) and *Uniform Support Petition* (form OMB 0970-0085). If you need a *Response* form, you may get one from the local child support agency, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the *Response,* follow the procedures listed in the information sheet attached to that form.**

   b. ☐ **NOTICE: THIS IS A JUDGMENT. It is now legally binding.**

2. **THIS MATTER PROCEEDED AS FOLLOWS:**
   a. ☐ Judgment entered under Family Code section 17404.1.
   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 (Family Code, §§ 17400, 17406) by *(name):*
      (6) ☐ Other *(specify):*

   c. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party.

3. ☐ This order is based on presumed income for the parent ordered to pay support under Family Code section 17404.1.

4. ☐ Attached is a computer printout showing the parents' income 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.

5. ☐ The order is based on the attached documents *(specify):*

6. **THE COURT ORDERS:**
   a. The parent ordered to pay support ☐ is the parent of the children named in item 6b.
      ☐ has previously been determined to be the parent of the children named in item 6b.
   b. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

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 Mandatory Use
Judicial Council of California
FL-530 [Rev. January 1, 2020]

JUDGMENT REGARDING PARENTAL OBLIGATIONS (UIFSA)

Family Code, §§ 5700.307, 17404.1
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. b. (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.

c. ☐ 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.

d. ☐ 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):*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. d. (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.

e. No provision of this judgment operates 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.

f. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

g. **An earnings assignment order is issued.**

h. 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.

i. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k The *Notice of Rights and Responsibilities* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

l. ☐ The court further orders *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
Date:

▶ _____

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*FOR COURT USE ONLY*
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/PARTY:	
STIPULATION AND ORDER	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 (Family 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. All orders previously made in this action remain in full force and effect except as specifically modified below.
   b. The amount of support payable by the parent 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 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 attached computer printout 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-625 [Rev. January 1, 2020]

STIPULATION AND ORDER
(Governmental)

Family Code, §§ 17400, 17402, 17404, 17430
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

3. d. ☐ 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.

e. ☐ The parent ordered to pay support ☐ The parent receiving support (1) must 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.

f. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

(1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $

(2) ☐ Interest is not included and is not waived.

(3) ☐ Payable: $ on the: day of each month beginning *(date):*

(4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

3. g. 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.

h. All payments, unless specified in item 3d(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

i. **An *Income Withholding for Support* (form FL-195/OMB No. 0970-0154) will issue.**

j. 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.

k. If "The parent ordered to pay support" box is checked in item 3e, a health insurance coverage assignment must issue.

l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

m. 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.

n. ☐ The following person (the "other parent/party") is added as a party to this action *(name):*

o. ☐ Other *(specify):*

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)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF OTHER PARENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR OTHER PARENT)

ORDER

4. **THE COURT SO ORDERS.**

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

DECLARATION OF PERSON PROVIDING INTERPRETATION/TRANSLATION: The party/parties indicated below is/are unable to read or understand this *Stipulation and Order* 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 and Order* in the party's primary language. The above-named party said that the terms of this *Stipulation and Order* were understood by that party before it was signed.

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.: 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/PARTY:	
JUDGMENT REGARDING PARENTAL OBLIGATIONS ☐ _____ **AMENDED** ☐ _____ **SUPPLEMENTAL**	CASE NUMBER:

1. a. **NOTICE: THIS IS A ☐ PROPOSED ☐ AMENDED PROPOSED JUDGMENT. This *Judgment Regarding Parental Obligations* will be entered by the court and will become legally binding unless you fill out and file the *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610) with the court clerk within 30 days of the date you were served with the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600). If you need form FL-610, you may get one from the local child support agency's office, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the answer, follow the procedures listed in the attached instructions.**

   b. ☐ **NOTICE: THIS IS A JUDGMENT. It is now legally binding.**

2. **This matter proceeded as follows:**
   a. ☐ Judgment entered under Family Code section 17430.
   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 attorney (Family Code, §§ 17400,17406) *(name):*
      (6) ☐ Other *(specify):*

   c. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party.

3. ☐ This order is based on presumed income for the parent ordered to pay support under Family Code section 17400.
4. ☐ Attached is a computer printout showing 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.
5. ☐ This order is based on the attached documents *(specify):*

THE COURT ORDERS

6. a. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party are the parents of the children named in item 6b below.

   b. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

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-630 [Rev. January 1, 2020]

JUDGMENT REGARDING PARENTAL OBLIGATIONS
(Governmental)

Family Code, §§ 17400,17402, 17404,17430
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. b. (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.

c. ☐ The parent ordered to pay support ☐ The parent receiving support (1) must 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.

d. ☐ 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):*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. d. (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.

e. If this is a judgment on a *Supplemental Complaint,* it does not modify or supersede any prior judgment or order for support or arrearage, unless specifically provided.

f. No provision of this judgment can 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.

g. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

h. **An earnings assignment order is issued.**

i. 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.

j. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

k. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

l. 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.

m. ☐ The following person (the "other parent/party") is added as a party to this action *(name):*

n. ☐ **The court further orders** *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
Date:

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
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/PARTY:	
FINDINGS AND RECOMMENDATION OF COMMISSIONER	CASE NUMBER:

1. Name *(specify):* objected to Commissioner *(name):*
   hearing this matter as a temporary judge.
2. **THIS MATTER PROCEEDED AS FOLLOWS**
   a. ☐ 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 attorney (Family Code, §§ 17400, 17406) by *(name):*
      (6) ☐ Other *(specify):*
   b. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party.
3. ☐ Attached is a computer printout showing the parents' income and percentage of time each parent spends with the child(ren). The printout, which shows the calculation of child support payable, will become the court's findings.
4. ☐ This recommended order is based on the attached documents *(specify):*

5. **THE COMMISSIONER RECOMMENDS THE FOLLOWING**
   a. All orders previously made in this action remain in full force and effect except as modified below.
   b. *(Name of parent):* ☐ mother ☐ father
      (Name of parent): ☐ mother ☐ father
      are the parents of the children listed below.
   c. 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.

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-665 [Rev. January 1, 2020]

FINDINGS AND RECOMMENDATION OF COMMISSIONER
(Governmental)

Family Code, § 4251
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

5. c. (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.

d. ☐ 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.

e. ☐ 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.

f. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

(1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $

(2) ☐ Interest is not included and is not waived.

(3) ☐ Payable: $ on the: day of each month
beginning *(date):*

(4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

g. No provision of this judgment/order 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.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

5. h. All payments, unless specified in item 5c(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

i. **An earnings assignment order is issued.**

j. 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.

k. If "The parent ordered to pay support" box is checked in item 5d, a health insurance coverage assignment must issue.

l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

m. 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.

n. ☐ The following person (the "other parent/party") is added as a party to this action *(name):*

o. ☐ The court further recommends *(specify):*

Date:

_____
COMMISSIONER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

CLERK'S CERTIFICATE OF SERVICE OR MAILING

I certify that I am not a party to this cause and that

1. ☐ **Personal service.** A true copy of this *Findings and Recommendation of Commissioner* was handed to the
   ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party
   at the hearing of this matter before the commissioner.
2. ☐ **Mail.** A true copy of this *Findings and Recommendation of Commissioner* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the request was mailed
   at *(place):* California,
   on *(date):*

Date: Clerk, by _____, Deputy

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 DETERMINATION OF SUPPORT ARREARS	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. The local child support agency is providing support enforcement services in this case.

3. **DETERMINATION OF SUPPORT ARREARS**

   a. The local child support agency states that past due support payments (arrears) are owed, as shown in the attached document.

   b. I disagree with the local child support agency's statement, and I request the court to make a determination of arrears. I am attaching my statement of the arrears, which includes a monthly breakdown of amounts ordered and amounts paid.

4. ☐ Other *(specify):*

☐ Number of pages attached: _____

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's acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. 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.

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
FL-676 [Rev. January 1, 2020]

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

An adult *other than you* must complete the Proof of Service below.

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. My residence of business address is *(specify):*

3. I served a copy of the foregoing *Request for Determination of Support Arrears* (form FL-676) and all attachments as follows *(check either a, b, or c for each party served):*

   a. ☐ **Personal delivery.** I personally delivered a copy and all attachments as follows:

      (1) ☐ Name of party or attorney served:

      (a) Address where delivered:

      (b) Date delivered:

      (c) Time delivered:

      (2) ☐ Name of local child support agency served:

      (a) Address where delivered:

      (b) Date delivered:

      (c) Time delivered:

   b. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred. I deposited this request with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:

      (1) ☐ Name of party or attorney served:

      (a) Address:

      (b) Date mailed:

      (c) Place of mailing *(city and state):*

      (2) ☐ Name of local child support agency served:

      (a) Address:

      (b) Date mailed:

      (c) Place of mailing *(city and state):*

      (3) I served this motion/request, which included an address verification declaration (*Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order* (form FL-334) 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 OF PERSON WHO SERVED REQUEST)

INFORMATION SHEET: REQUEST FOR DETERMINATION OF SUPPORT ARREARS

Please follow these instructions to complete a *Request for Determination of Support Arrears* (form FL-676). If you need free help completing form FL-676, you can contact the Family Law Facilitator's Office in your county. For more information on finding a family law facilitator, see the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp*.

Form FL-676 should be used only if you disagree with the past due support payments (arrears) that the local child support agency says are owed and you cannot reach an agreement with the local child support agency. Child support includes the basic amount plus any additional amounts for child care costs related to employment, or training needed to get job skills and reasonable uninsured health care costs for the children. Form FL-676 cannot be used if you want to change your child support order.

When you have completed form FL-676, file the original and attachments with the court clerk. The court clerk's address is listed in the telephone directory under "County Government Offices" or online at *www.courts.ca.gov/find-my-court.htm*. Keep three copies of the filed form and its attachments. Serve one copy on the local child support agency, one copy on the other parent, and keep the other for your records. (See *Information Sheet for Service of Process* (form FL-611).)

INSTRUCTIONS FOR COMPLETING FORM FL-676 (TYPE OR PRINT IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent/Party in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the Other Parent/Party, leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also listed on your most recent support order or judgment.

1.a.–b You must contact the court clerk's office and ask that a hearing date be set for this motion. The court clerk will give you the information you need to complete this section.

2. This section states that the local child support agency is handling your support case.

3a. **This section requires you to attach the statement or other document from the local child support agency that tells the amount of support arrears owed.**

3b. **This section requires you to attach your own statement of the amount of support arrears owed.** Your statement must show a monthly breakdown of the amount of support ordered and the amount paid each month. You may use *Declaration of Payment History* (**form FL-420**) and *Payment History Attachment* (**form FL-421**) to complete your statement of arrears.

You must date the request, 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.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent/Party in this box. Use the same names listed on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as the one on the front page. Instructions for how to complete the Proof of Service section of the *Request* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out this section of the form. **You cannot serve your own form FL-676.**

DRAFT
Not approved by
the Judicial Council

Form Approved for Optional Use
Judicial Council of California
FL-676-INFO [Rev. January 1, 2020]

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):* OR ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):* TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **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/PARTY:	
ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept.: Judicial officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*
   c. ☐ Respondent/defendant present ☐ Attorney present *(name):*
   d. ☐ Other parent/party present ☐ Attorney present *(name):*
   e. Local child support agency attorney (Family Code, §§ 17400, 17406) by *(name):*
   f. ☐ Other *(specify):*

   g. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party.
2. ☐ Attached is a computer printout showing the parents' income 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.
3. ☐ This order is based on the attached documents *(specify):*

THE COURT ORDERS

4. a. All orders previously made in this action remain in full force and effect except as specifically modified below.
   b. The parent ordered to pay support is the parent of and must pay current child support for the following children:

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.

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.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

4. b. (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 *(specific reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

c. ☐ 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.

d. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

(1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $

(2) ☐ Interest is not included and is not waived.

(3) ☐ Payable: $ on the: day of each month beginning *(date):*

(4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. No provision of this order 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.

f. All payments, unless specified in item 4b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

g. **An earnings assignment order is issued.**

h. 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.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

4. i. If "The parent ordered to pay support" box is checked in item 4c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k. 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.

l ☐ The following person (the "other parent/party") is added as a party to this action *(name):*

m. ☐ The court further orders *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
Date:

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*FOR COURT USE ONLY*
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/PARTY:	
SHORT FORM ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept: Judicial Officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*
   c. ☐ Respondent/defendant present ☐ Attorney present *(name):*
   d. ☐ Other parent/party present ☐ Attorney present *(name):*
   e. Attorney for local child support agency present under Family Code sections 17400 and 17406 by *(name):*
   f. ☐ Other *(specify):*

2. **THE COURT FINDS,** based upon the moving papers:
   a. *(Name):* is the parent ordered to pay support in this proceeding.
   b. ☐ The parent ordered to pay support has no ability to pay support because *(specify):*
   c. ☐ Health insurance coverage at no or reasonable cost is currently not available to the parent ordered to pay support to cover the minor children in this action.

3. **THE COURT ORDERS**
   a. All orders previously made in this action will remain in full force and effect except as specifically modified below.
   b. ☐ This matter is continued to: in Dept.: for the following purposes only:
   c. ☐ The parent ordered to pay support is ordered to appear on the continuance date.
   d. ☐ Current child support is modified to: $ per month beginning *(date):*
   e. ☐ The court retains jurisdiction to order support retroactive to:
      (1) ☐ *(Specify date):*
      (2) ☐ The date the parent ordered to pay support becomes employed or otherwise has the ability to pay support.
      (3) ☐ The date the parent ordered to pay support abandons or separates from the children at issue in this case.
   f. ☐ Any order to liquidate the support arrearage is suspended until further order of this court.
   g. 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.
   h. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

Form Adopted for Mandatory Use
Judicial Council of California
FL-688 [Rev. January 1, 2020]

Family Code, §§ 17400, 17402, 1740, 17406
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

3. i. ☐ The parent ordered to pay support is ordered to obtain health insurance coverage for the children in this action if it becomes available at no or reasonable cost. The party 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.

j. ☐ Other *(specify):*

4. Number of pages attached: _____

Approved as conforming to court order.

Date:

▶ _____

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

Date:

_____

JUDICIAL OFFICER

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**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
☐ **MINUTES** ☐ **ORDER** ☐ **JUDGMENT** ☐ **RECOMMENDED ORDER**	CASE NUMBER:

This form may be used for preparation of court minutes and/or as an alternative to form FL-615, FL-625, FL-630, FL-665, or FL-687. If this form is prepared as both court minutes and an alternative to one of these forms, then the parties do not need to prepare any additional form of order.

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Time: Department:
   b. Judicial officer *(name):* ☐ Judge pro Tempore ☐ Commissioner
      Court reporter *(name):* Court clerk *(name):*
   c. ☐ Interpreter(s) present *(name):*
      for *(name):* (specify language):
   d. ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*
   e. ☐ Respondent/defendant present ☐ Attorney present *(name):*
   f. ☐ Other parent/party present ☐ Attorney present *(name):*
   g. Attorney for local child support agency *(name):*
   h. The parent ordered to pay support for purposes of this order is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party present
   i. ☐ Other *(specify):*
2. ☐ This is a recommended order/judgment based on the objection of *(specify name):*
3. a. ☐ This matter is taken off calendar.
   b. ☐ This entire matter is denied ☐ with ☐ without prejudice.
   c. ☐ This matter is continued at the request of the ☐ local child support agency ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party to
      Date: Time: Department:
      (specific issues):
      ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party is ordered to appear at that date and time.
   d. ☐ The court takes the following matters under submission *(specify):*
4. ☐ **Order of examination**
   The ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other *(specify):*
   was sworn and examined.
   ☐ Examination was held outside of court.
5. **Referrals**
   a. ☐ The parties are referred to family court services or mediation.
   b. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party is referred to the family law facilitator.
   c. ☐ Other *(specify):*

THE COURT FINDS

6. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party ☐ was ☐ was not served regarding this matter.
7. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party ☐ admits ☐ denies parentage.
8. ☐ The parents of the children named below in item 14a are *(specify names):*

Form Adopted for Alternative Mandatory Use
Instead of Form FL-615, FL-625, FL-630, FL-665, or FL-687
Judicial Council of California
FL-692 [Rev. January 1, 2020]

Family Code, §§ 17400, 17406
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

9. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party has read, understands, and has signed the *Advisement and Waiver of Rights for Stipulation (Governmental)* (form FL-694). He or she gives up those rights and freely agrees that a judgment may be entered in accordance with these findings.

10. a. Guideline support amount: $

b. This order ☐ is ☐ is not based on the guideline.

c. ☐ The attached *Guideline Findings Attachment (Governmental)* (form FL-693) is incorporated into these findings.

d. ☐ A printout, which shows the calculation of child support payable, is attached and must become the court's findings.

e. ☐ The child support agreed to by the parents is ☐ below ☐ above the statewide child support guideline. The amount of support that would have been ordered under the guideline formula is: $ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance, and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. The order is in the best interest of the children. If the order is below the guideline, no change of circumstance will be required for the court to modify this order. If the order is above the guideline, a change of circumstance will be required for the court to modify this order.

f. ☐ The low-income adjustment applies.

☐ The low-income adjustment does not apply because *(specify reasons):*

11. ☐ Arrearages from *(specify date):* through *(specify date):*

are: $ ☐ including interest ☐ interest not computed and not waived.

THE COURT ORDERS

12. All orders previously made in this action must remain in full force and effect except as specifically modified below.

13. ☐ Genetic testing must be coordinated by the local child support agency.

a. ☐ Respondent/defendant ☐ Petitioner/plaintiff ☐ Mother of the children

☐ Other *(specify):*

and the minor children must each submit to genetic testing as directed by the local child support agency.

b. ☐ The parent ordered to pay support must reimburse the local child support agency for genetic testing costs of: $

14. a. ☐ The parent ordered to pay support is the parent of the children listed below and must pay current child support for them.

☐ The court finds that there is sufficient evidence that the parent ordered to pay support is the parent of the children listed below and therefore there is sufficient evidence to enter a support order.

Name of child	Date of birth	Monthly basic support amount

☐ Additional children are listed on an attached page.

b. ☐ The parent ordered to pay support must pay additional support monthly for actual child-care costs of

☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.

Payments must be made to the ☐ State Disbursement Unit ☐ other party ☐ child-care provider.

c. ☐ The parent ordered to pay support must pay reasonable uninsured health-care costs for the children of

☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.

Payments must be made to the ☐ State Disbursement Unit ☐ other party ☐ health-care provider.

d. ☐ The parent ordered to pay support must pay additional support monthly for the following *(specify):*

☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.

Payments must be made to the ☐ State Disbursement Unit ☐ other party.

e. ☐ Other *(specify):*

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.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

14. f. ☐ For a total of: $ payable on the: day of each month
beginning *(date):*

g. ☐ The low-income adjustment applies.

☐ The low-income adjustment does not apply because *(specify reasons):*

h. Any support ordered will continue until further order of court, unless terminated by operation of law.

15. ☐ 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.

16. ☐ The parent ordered to pay support may claim the children for tax purposes as long as all child support payments are current as of the last day of the year for which the exemptions are claimed.

17. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party must pay to ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party
as ☐ spousal support ☐ family support $ per month, beginning *(date):*
☐ payable on the: day of each month.

18. ☐ The parent ordered to pay support must pay child support for the following past periods and in the following amounts:

Name of child	Period of support	Amount

a. ☐ Other *(specify):*

b. ☐ For a total of: $ payable: $ on the: day of each month
beginning *(date):*

c. ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

19. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

a. ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $ ☐ Other: $

b. ☐ Interest is not computed and is not waived.

c. ☐ Payable: $ on the: day of each month
beginning *(date):*

d. ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

20. No provision of this judgment can operate to limit any right to collect all sums owing in this matter as otherwise provided by law.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

21. All payments, unless specified in items 14b, c, and d above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

22. **An earnings assignment order is issued.**

23. 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.

24. If "The parent ordered to pay support" box is checked in item 15, a health insurance coverage assignment must issue.

25. ☐ Job search. *(Specify name(s)):* must seek employment for at least least *(specify number):* jobs per week and report those job applications and results to the court and the local child support agency at the continuance date. These job applications are to be made in person, not by phone, fax, or e-mail.

26. ☐ For purposes of the licensing issue only, the parent ordered to pay support is found to be in compliance with the support order in this action. The local child support agency must issue a release of license(s).

27. ☐ Notwithstanding any noncompliance issues with the support order in this action, the court finds that the needs of the party ordered to pay support warrant a conditional release. The local child support agency must issue a release of license(s). Such release is effective only as long as the parent ordered to pay support complies with all payment terms of this order.

28. ☐ A warrant of attachment/bench warrant issues for *(specify name):*
    a. ☐ Bail is set in the amount of: $
    b. ☐ Service is stayed until *(date):*

29. ☐ The court retains jurisdiction to make orders retroactive to *(date):*

30. ☐ The court reserves jurisdiction over ☐ all issues ☐ the issues of *(specify):*

31. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

32. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) are attached and incorporated.

33. ☐ The following person (the "other parent/party") is added as a party to this action *(name):*

34. ☐ The court further orders *(specify):*

Approved as conforming to court order.
Date:

▶ _____
(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

▶ _____
(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

_____
JUDICIAL OFFICER

☐ Number of pages attached: _____

☐ Signature follows last attachment.

Item number: 33

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship and Guardianship: Accounting (amend Cal. Rules of Court, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Probate Conservatorship and Guardianship: Accounting

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 7.575; approve form GC-410

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 13, 2019

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends amending one rule of the California Rules of Court and approving one form to clarify existing requirements, provide guidance on submitting original account statements when they are issued and received electronically, and require submission of specified information about a ward's or conservatee's personal residence in support of a request for a waiver of an otherwise required periodic accounting. The amendments are needed to facilitate implementation of statutory accounting requirements and to protect a personal residence from loss or foreclosure by verifying that the fiduciary is using ordinary care and diligence.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 7.575 of the California Rules of Court to:

    - Restructure the existing provisions of the rule to clarify the distinction between standard and simplified accountings and the requirements for each;

- Add subdivision (b) to provide guidance on submitting original account statements in paper form in support of a court accounting; and

- Add subdivision (f) to require submission of specific documents regarding a conservatee's or ward's personal residence in support of a request for a waiver of an otherwise required accounting; and

2. Approve *Request and Order for Waiver of Accounting (Guardianships and Conservatorships)* (form GC-410) for optional use.

The text of the amended rule and the form are attached at pages 8–15.

Relevant Previous Council Action

The Judicial Council adopted rule 7.575 of the California Rules of Court, effective January 1, 2008, in response to the mandate in Assembly Bill 1363 (Stats. 2006, ch. 493, § 24), part of the Omnibus Conservatorship and Guardianship Reform Act of 2006.[1]

Analysis/Rationale

Probate Code section 2620 requires a conservator or guardian of the estate to file periodic accountings with the court at regular intervals beginning one year from the date of the fiduciary's appointment and establishes requirements governing those accountings.[2] Rule 7.575 implements section 2620(a)'s mandate to develop standard accounting forms, simplified accounting forms, and rules specifying when the simplified forms could be used.[3] The committee recommends clarifying the rule and expanding its scope to address challenges to compliance with accounting requirements in statute and the existing rule.

Standard and simplified accountings

First, the committee recommends reorganizing and rewriting the rule to address confusion reported by courts, fiduciaries, and attorneys regarding the distinction between standard and simplified accountings and the use of the Judicial Council form sets for each type. The preamble to the rule is amended to place conservatorship and guardianship accounting requirements more clearly in context. After amendment, subdivision (a) clarifies the information required in every accounting, standard or simplified. Subdivisions (c) and (d) outline the requirements for standard and simplified accountings, respectively; subdivision (d)(1) explains the circumstances in which a fiduciary is authorized to file a simplified accounting. Subdivision (e) describes the Judicial

[1] See Judicial Council of Cal., Advisory Com. Rep., *Probate: Standard and Simplified Accountings by Conservators and Guardians* (Oct. 2, 2007).

[2] Prob. Code, § 2620. Unless otherwise specified, all subsequent statutory references are to the Probate Code, and all references to rules are to the California Rules of Court.

[3] *Id.,* § 2620(a).

Council accounting forms and the different circumstances in which each set may or must be used.[4]

Original statements in support of accountings

Second, the committee recommends adding a new subdivision (b) to provide guidance on submission of financial statements in support of conservatorship and guardianship accountings. As amended by Assembly Bill 1286 (Stats. 2001, ch. 563, § 6), section 2620(c) requires a fiduciary to file *original* statements, not copies. This requirement was enacted, at least in part, to prevent fiduciaries from committing accounting fraud by altering original paper statements, photocopying the statements to conceal the alterations, and submitting the photocopies to the court.[5] Since 2001, it has become common practice for banks and other financial institutions to issue and deliver statements to accountholders in electronic form. The fiduciaries who receive financial statements in electronic form have encountered both legal and practical problems trying to submit "original" electronic statements in support of accountings.

Neither section 2620(c) nor the Assembly Judiciary Committee's analysis of AB 1286 addresses the conditions required for a statement, electronic or paper, to qualify as an original, except to note that a photocopy would not.[6] The statutes and rules of court governing court filings allow documents to be submitted or filed electronically and in paper form, and set standards for filing in each form.[7] But the electronic filing statute and rules focus on filing electronic copies of paper originals.[8] Determining when a document issued or delivered electronically to a filer constitutes an original is beyond their current scope.

Fiduciaries also face practical difficulties filing electronic statements. Filing the statements electronically, in the same form as they were received, depends on local e-filing rules that vary widely among courts. Many courts do not permit any electronic filing.[9] Some courts that permit or require electronic filing in probate proceedings do not permit financial documents to be filed in electronic form.[10] In courts that do permit e-filing, fiduciaries may be unable to comply with

---

[4] Subdivisions (b) and (f) are discussed in detail below.

[5] 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).

[6] See Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1286, *supra* note 5, at p. 3.

[7] Code Civ. Proc., § 1010.6(b), (e); Cal. Rules of Court, 2.10 (rules apply to documents submitted in electronic or paper form), 2.100 (form and format of papers); 2.114 (form and format of exhibits), 2.250(b)(1) (document includes an exhibit or other writing submitted to the court; may be in paper or electronic form).

[8] See Code Civ. Proc., § 1010.6(b)(1) (document filed electronically shall have the same legal effect as an original paper document); Cal. Rules of Court, rule 2.250(b)(1) (document may be in paper or electronic form) with *id.,* rule 2.252(e) (if filing an original document is required, a person may file an electronic copy if the original is filed later).

[9] See, e.g., Super. Ct. Contra Costa County, Local Rules, rule 2.70; Super. Ct. Yolo County, Local Rules of Court, rules 2.2, 2.4, 11.1.

[10] See, e.g., Super. Ct. Butte County, Local Court Rules, rule 21.4(a)4; Super. Ct. Calaveras County, Local Court Rules, rule 2.15(d)4; Super. Ct. Orange County, Local Rules, rule 352, and EFILING FOR PROBATE/MENTAL

the format requirements in rule 2.256(b) or local rules without altering the electronic statements.[11] Fiduciaries who submit paper printouts of electronically delivered statements have found that courts may reject those filings because they, too, are not originals.

Both fiduciaries and courts have requested assistance in addressing these difficulties. Amended rule 7.575(b) does this by authorizing a court to accept a computer-generated printout of a statement submitted by a fiduciary who received the statement in electronic form under certain conditions. To avoid running afoul of section 2620(c), the rule requires that the printout meet Evidence Code section 255's definition of "original." (Evid. Code, § 255.) Section 255 provides 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."[12] Rather than separately defining an electronic original, section 255 provides the flexibility needed to treat a paper printout of an electronic document as an original.

The rule also requires the fiduciary to verify under penalty of perjury that the submitted statement was received electronically and printed without alteration. The committee is sensitive to the need to prevent fiduciary fraud and has therefore clarified that the rule is not intended to create an exception to the requirement in section 2620(c). Rule 7.575(b) clarifies the statutory term "original statement"; it does not authorize submission of a copy of a statement.

Waiver of an accounting

Third, the committee recommends adding a new subdivision (f) to address waiver of an accounting and approving an optional form for use to request and order those waivers. Section 2628(a) 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.

As amended, rule 7.575(f) requires a conservator or guardian who requests a waiver of an otherwise required accounting to submit, in addition to information establishing that the conditions required by section 2628(a) have been met, specific information about the support and maintenance of the ward's or conservatee's personal residence, if the estate includes one. The additional information will assist the court to perform its oversight function (see Prob. Code,

---

HEALTH, *www.occourts.org/online-services/efiling/efiling-probate.html* (private professional fiduciaries barred from e-filing original financial documents).

[11] Cal. Rules of Court, rule 2.256(b) (specifying software, printing, and text search requirements). In addition, some case management systems can receive a document for electronic filing only after the document has been printed (if electronic), scanned, and saved in a specific format.

[12] 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 or elsewhere in the Probate Code or the Code of Civil Procedure and the Legislature's presumptive awareness of existing law (see *In re Greg F.* (2012) 55 Cal.4th 393, 407), the committee interprets Evidence Code section 255's definition of "original" to apply to account statements filed in satisfaction of section 2620(c)'s requirements.

§ 2102) more effectively and to prevent the loss of a personal residence because of a fiduciary's failure to use ordinary care and diligence.

Finally, the committee recommends approving *Request and Order for Waiver of Accounting (Guardianship and Conservatorship)* (form GC-410) for optional use by a conservator or guardian to request a court order waiving an otherwise required accounting. The form will serve as a checklist, ensuring that the fiduciary has addressed all the elements required by section 2628(a) and included the information and documents required by amended rule 7.575(f). The order block at the end of the form will simplify the process of granting a waiver and reduce paperwork.

Policy implications

The recommendation promotes at least three Judicial Council policy objectives. First, it will help modernize the rules of court by addressing an ambiguity arising from advances in technology. Second, it will promote access to the courts by clarifying the rule and providing a form to ensure the court receives the information needed to determine a request for waiver. Third, the proposal will improve the quality of justice and service to the public by giving the court more information to allow it to exercise its oversight of fiduciary relationships more effectively.

Comments

The proposed recommendation was circulated for public comment to the regular list of persons interested in probate and mental health proposals from April 12 to June 10, 2019, as part of the regular spring comment cycle. The proposal received ten comments from individuals and organizations. Four commenters—including three superior courts and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee—agreed with the proposal as circulated; four commenters agreed with the proposal and suggested modifications; and one commenter did not indicate a position, but generally agreed with the proposal. One commenter did not agree with the proposal.[13] A chart with the full text of the comments received and the committee's responses is attached at pages 16–25.

The committee considered all comments received and made several modifications to its recommendation in response. Several commenters interpreted proposed rule 7.575(b) to authorize a fiduciary to submit copies of electronic statements in support of court accountings. That is not the committee's intent. As noted above, section 2620(c) requires submission of original statements. A rule authorizing submission or acceptance of copies would be inconsistent with the statute and therefore beyond the Judicial Council's rule-making authority. The committee instead added language to clarify that the rule is not intended to authorize the submission or acceptance of copies. In addition, and for similar reasons, the committee declined

[13] The commenter who did not agree with the proposal predicted that its adoption would effectively do away with the requirement to submit original statements and would interfere with courts' ability to detect accounting fraud, but did not provide any basis for these predictions. The committee does not believe that its recommendation will have either of these predicted effects.

to add a reference to section 1552 of the Evidence Code to subdivision (b) because section 1552 appears to authorize the submission of copies of electronic documents in certain circumstances.

Commenters also suggested that the committee add language to the rule to specify the type of evidence that would be required to verify the accuracy of a printed statement's content. The committee elected not to address this issue because it is beyond the scope of the proposal. The rule, like the statute, leaves to the court to determine what, if any, further evidence is sufficient to verify the accuracy of the statement's content. The court is in the best position to determine the credibility of the fiduciary in that regard. The committee did, however, modify the recommendation to specify more clearly the conditions for the court's acceptance, as an original, of a computer-generated printout of an electronic statement.

Finally, commenters suggested that the committee add express references in rule 7.575 and form GC-410 to rule 7.903, which applies the accounting requirements in section 2620 to accountings filed by trustees of specific trusts funded by court order. (See Cal. Rules of Ct., rule 7.903(c)(6).) The committee does not recommend this addition. Rule 7.575 was adopted effective January 1, 2008, three years after the Judicial Council adopted rule 7.903. The council is presumed to have known that section 2620, which rule 7.575 implemented, applied to trusts within the scope of rule 7.903. Yet the council did not then incorporate a reference to those trusts into rule 7.575, there has been no indication that the absence of such a reference has caused confusion or delay in the twelve years since rule 7.575 was adopted, and the committee is not aware of changed circumstances warranting its inclusion now.[14]

Alternatives considered

The committee considered not recommending amendments to rule 7.575 or approval of form GC-410. But the ongoing challenges for conservators and guardians who receive electronic account statements for the estate and must file original statements in support of accountings and the need for courts to protect a conservatee's or ward's interest in their personal residence in light of the statewide housing crisis persuaded the committee that the rule amendments are needed.

The committee also considered recommending the adoption of form GC-410 for mandatory use, both before circulation and again in response to comments received. The committee decided to recommend the form's approval for optional use, in large part because several courts have already developed local forms that serve the same purpose. The committee does not wish to preempt effective local practices, but does hope to facilitate their expansion to other courts. Committee members who represent court staff suggested that an optional form would be useful to courts that had not already adopted a local form for requesting a waiver.

[14] The council may have chosen to forgo a blanket reference to rule 7.903 because that rule precludes the application of section 2620 to trusts with total assets of $20,000 or less after funding. (See *id.,* rule 7.903(d).)

Fiscal and Operational Impacts

The proposal would clarify certain accounting requirements for guardians and conservators, facilitate the filing of accountings that comply with statutory requirements, provide the court with more information to review filed accountings, and thereby reduce continuances and other delays in reviewing accountings. The requirement to submit documentation of activity to maintain a personal residence would impose a burden on the fiduciary, but that duty would be far less onerous than requiring the fiduciary to complete and file the full accounting of which the fiduciary seeks a waiver. Courts will need to integrate form GC-410 into their case management systems. Some courts already have procedures in place to address requests to waive an accounting in a conservatorship or guardianship. This proposal is not intended to displace any of those procedures.

Attachments and Links

1. Rule 7.575, at pages 8–13
2. Form GC-410, at pages 14–15
2. Chart of spring 2019 comments and committee responses, at pages 16–25
3. Link A: Prob. Code, § 2620, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2620.*
4. Link B: Prob. Code, § 2628, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2628.*

Rule 7.575 of the California Rules of Court is amended, effective January 1, 2020, to read:

Rule 7.575. ~~Accounts~~ Accountings 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 waived by the court under Probate Code section 2628, 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, each accounting filed with the court must include:

(1) All information required by Probate Code section 1061 in the *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM));

(2) All information required by Probate Code sections 1062–1063 in the supporting schedules; and

(3) 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, including all original statements, specified in section 2620(c) of the Probate Code.

(1) If a conservator or guardian receives a statement from the issuing institution in electronic form but not in paper form, the court has discretion to accept a computer-generated printout of that statement as an original in satisfaction of the requirements in section 2620(c) if,

(A) The fiduciary submitting the printout verifies under penalty of perjury that the statement was received in electronic form and printed without alteration, and

(B) The printout is an "original," as defined in Evidence Code section 255.

(2) This rule does not authorize a fiduciary to submit, or a court to accept, a copy of a statement in support of an accounting filed under section 2620.

(~~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 subtotaled on a separate form. A conservator, guardian, or trustee must file each accounting as a standard accounting unless a simplified accounting is authorized in (d)(1).

(~~e~~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, guardian, or trustee may file a simplified accounting only if all the following requirements are met:

(A) The estate or trust does not contain any income-generating real property;

(B) The estate or trust does not contain either a whole or a partial interest in a trade or business;

(C) The appraised value of the estate or trust, 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 fiduciary 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.

(dc) ~~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 fiduciary 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 fiduciary 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.

~~(c)~~ ~~**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) Order waiving an accounting

The court may make an order waiving an otherwise required accounting if all the conditions in Probate Code section 2628(a) are met. If the conservatee or ward owns a personal residence, the request for an order waiving the accounting must include, in addition to the information needed to verify that all 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 fee or dues statement for any homeowners' association or similar 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:

HEARING DATE AND TIME: DEPT.:

REQUEST AND ORDER FOR WAIVER OF ACCOUNTING
(Guardianships and Conservatorships)

1. I, *(name):*
   conservator or guardian of the estate ☐ and the person of *(name):*
   request that the court make an order waiving 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 to verify this statement): _____

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 residence listed in 2, the personal residence is located at *(street address):*

      A verified copy of each applicable document of the following is 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 to verify this statement): _____

Form Approved for Optional Use
Judicial Council of California
GC-410 [New January 1, 2020]

Probate Code, § 2628;
Cal. Rules of Court, rule 7.575(f)
www.courts.ca.gov

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(name):*	CASE NUMBER:

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 to verify this statement):* _____

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.

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 Probate Code section 2628, 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)

ORDER

The request for an order waiving the accounting for the period stated in item 1 is ☐ granted. ☐ denied.

This order does not waive or excuse the requirement to file a final accounting in this matter.

Date:

JUDICIAL OFFICER

SPR19-34

Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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

	Commenter	Position	Comment	Committee Response
1.	Michael Acker, Research Attorney Superior Court of Santa Barbara County Santa Maria	N	The proposed changes would essentially nullify any need to produce original statements and extremely attenuate, if not absolutely destroy, the court's ability to detect fraudulent activity in accountings.	The committee appreciates the commenter's concern. The committee does not intend its recommendation to modify Probate Code section 2620(c)'s requirement to produce original statements or to make it more difficult for a court to detect accounting fraud and does not believe the recommendation will have those effects. The committee notes that its recommendation is similar to local rule 1743 of the Superior Court of Santa Barbara County.
2.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	AM	The OCBA believes that this proposal approximately addresses its stated purposes provided the following amendments are made: (1) the proposed language at Rule 7.575(b)(1) on page 5 is confusing in that it only applies if the institution "stores financial information in electronic form" and "delivers original statements electronically" to the conservator/guardian; no conservator/ward would know anything about how an institution stores its data so that condition should be removed; the condition that the institution deliver "original" statements defeats the entire purpose of this rule change to make copies of computer statements and print-outs admissible in accordance with Evidence Code §255 and §1552; even if the amendments to Probate Code §2620(c) reference the use of "original account statements" and "original escrow closing statements" it should be presumed that the legislature understood the meaning of "original" in accordance with Evidence Code §255 and §1552;	The committee does not intend the proposed amendments to rule 7.575(b) to authorize the submission of *copies* of account statements in satisfaction of Probate Code section 2620(c) and has redrafted the rule to clarify its intent. The committee reads Evidence Code section 255 to treat a computer-generated printout of an electronic writing to *be* an original writing if it meets the criteria specified in that section. Therefore, a computer-generated printout of a statement transmitted and received electronically would qualify as an original statement as long as it met the statutory criteria because, as the commenter points out, the Legislature is deemed to have been aware of section 255 when it amended section 2620(c) in 2001 to require submission of original statements. In addition, the committee has redrafted rule 7.575(b)(1) to remove the condition that the bank or other institution *store* the financial information in electronic form and to focus instead on the bank's issuance of statements in electronic form

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

	Commenter	Position	Comment	Committee Response
			(2) at the same section a reference should be added to Evidence Code §1552 as additional support; and	and the fiduciary's receipt of statements in that form. The committee does not recommend adding a reference to Evidence Code section 1552 to the rule. The Legislature added section 1552 in 1998 (SB 177 [Stats. 1998, ch. 100]) as part of replacing the "best evidence rule," which required an original writing to be offered in evidence, with the "secondary evidence rule," which allows the content of a writing to be proved by admissible evidence other than the original document. Section 1552 states: "A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent." That language appears to treat a "printed representation" as a *copy,* or secondary evidence, of the original "computer information." By contrast, section 255 treats a "computer-generated printout" that meets specified criteria as an *original* document. Three years later, with both those provisions in place, the Legislature amended section 2620(c) to replace the requirement to submit copies of account statements with the requirement to submit originals. (SB 1286 [Stats. 2001, ch. 563].) This amendment is best read as an exception to the secondary evidence rule. The Legislature required originals instead of copies to make it harder for a fiduciary to file fraudulent accounts. The committee does not recommend incorporating Evidence Code section 1552's exception to that

	Commenter	Position	Comment	Committee Response
			(3) the OCBA recommends that the proposed Form GC-410 be made mandatory and referenced at proposed Rule 7.575(f) since a stated purpose of the rule is to create uniformity among all courts and allowing individual courts to utilize their own mandatory forms in this statutory area makes less sense in this setting.	requirement into rule 7.575 without express statutory direction. The committee does not recommend adoption of form GC-410 for mandatory use. Probate Code section 2628(a) and rule 7.575(f) establish sufficiently uniform statewide conditions for waiver of an accounting. Several courts have created forms that already incorporate these conditions. The committee does not intend to supersede these local forms. Furthermore, adopting a mandatory form may not be necessary to establish the uniformity desired by the commenter. Under rule 1.35(a), forms approved by the Judicial Council for optional use may, whenever applicable, be used by parties and must be accepted for filing by all courts.
3.	Michelle Rowe, Court Attorney Superior Court of San Luis Obispo County	AM	As to the original statement versus electronic statement changes under proposed rule 7.575(b)(2), it appears a declaration would typically be sufficient to establish the authenticity and accuracy of the electronic statements. Based on the current status on this issue and what is being	The committee does not intend to distinguish original statements from electronic statements. It intends, rather, to distinguish *electronic* statements from *paper* statements and address a fiduciary's reported difficulty in complying with section 2620(c) when statements are transmitted or received only in electronic form. Amending the rule to clarify that a computer-generated printout of an electronic statement is an "original" if it meets the definition in Evidence Code section 255 provides another method with which a fiduciary may comply with section 2620(c). The committee has modified the draft rule as suggested by the commenter below to require that the fiduciary verify that the statement was received electronically and was printed without

	Commenter	Position	Comment	Committee Response
			seen in our Court, I suspect most guardians and conservators (and court supervised SNT trustees per Cal. Rules of Court, rule 7.903) would argue they could be the person to execute the declaration. We currently have a local rule with a similar flavor to the proposed change and have seen this argument.	alteration. The printout must also meet the definition in Evidence Code section 255 for treatment as an original statement for purposes of section 2620(c). The rule, like the statute, leaves to the court to determine what, if any, further evidence is sufficient to verify the accuracy of the statement's content. The court is in the best position to determine the credibility of the fiduciary in that regard.
			This possible interpretation appears to circumvent the original purpose of the statute. In other words, there seems to be a conflict with the guardian/conservator/court supervised SNT trustee declaring the authenticity and accuracy of the data, when the Court is trying to confirm the same person has not altered data. It would be helpful if the rule indicated the guardian/conservator/court supervised SNT trustee, attorney for or employee of the either, could not be the party executing a declaration to show that authenticity and accuracy of the data (absent perhaps compelling circumstances as determined by the Court). If possible, the rule may need to reflect an agent from the institution, etc., should be the declarant, absent "compelling circumstances" as determined by the Court.	The committee has revised the draft rule to limit its scope more clearly to determining whether a computer-generated printout of an electronic statement may be deemed an original. Nothing in the rule would prevent the court from seeking verification of the statement's content in the event that doubts arose in the course of examination or audit. The scope of the court's authority in this regard is intended to be identical to the scope of its authority under section 2620(c)–(e).
			It is also noted subsection (B) only cites to guardians and conservators, but it appears this rule would also apply to SNT trustees for trusts subject to Cal. Rules of Court, rule 7.903. It would be helpful if the new rule of Court	The committee does not recommend adding a reference to a trust funded by court order to rule 7.575 without some indication that the absence of such a reference has caused confusion or delay in the twelve years since rule 7.575 was adopted.

	Commenter	Position	Comment	Committee Response
			specifically made this clarification, as I can imagine there will be challenges a trustee's burden due to the absence.	
4.	Hon. Ruben Sundeen, Commissioner Superior Court of Alameda County	NI	My comments are with regard to submission of original statements delivered or received electronically. I think requiring the fiduciary (and/or attorney) to verify—i.e., declare under penalty of perjury—that the attached account statements were received electronically, were printed without alteration, and constitute original records consistent with Evidence Code section 255, would provide assurances of authenticity and ensure the fiduciary understands the import and importance of submitting original records as conceived by the legislature.	The committee appreciates the commissioner's comments. The committee agrees with the suggestion and has modified recommended rule 7.575(b) to require a fiduciary who submits a computer-generated printout of an electronic statement to verify, as conditions of the court's accepting the statement, that the statement was received electronically and printed without alteration. The statement must also meet the criteria in Evidence Code section 255 for treatment as an original.
5.	Superior Court of Los Angeles County	AM	**Form GC-410** Sections 2 and 5b: "Personal Residence" is not defined or clear. Does it mean rented residence or ownership? Section 4, 6 and 7: A line at the end of text to initial required information will lead to a lot of missed initials, incomplete forms, and therefore lost court resources to reject and reprocess submissions. Section 5b:	The committee does not recommend defining "personal residence," though it understands the desire for a definition. Personal residence is not defined in the Probate Code or the probate rules. In addition, the form applies only to a personal residence that is part of the estate. Only a residence owned by the ward or conservatee would be part of the estate. The committee has revised its recommendation to align the spaces for initials to the left end of the text to be verified.

	Commenter	Position	Comment	Committee Response
			The line starting "Verified copies …" should include some indication that these documents must be provided if applicable. In current form the document appears to allow for supporting documents but may lead to a lot of rejected submissions. Section 9: The text indicates that a report will be filed if income changes. For the purpose of this form waiver, the court should not be concerned if income decreases and the text should be amended to indicate that the report will be filed if income *increases* by more than cost-of-living adjustments and only if income exceeds the Probate Code section 2628 threshold. Also, the requirement to file this report should be within a time certain, such as 30 or 60 days. Order: The form might include an area at the bottom of the last page for an order granting or denying the request for accounting waiver. **Does the proposal appropriately address the stated purpose?** Yes, as amended above. **Would the proposal provide cost savings? If so, please quantify.** No, we do not anticipate cost savings. **What would the implementation requirements be for courts—for example,**	The committee agrees with the suggestion and has modified its recommendation accordingly. The committee has determined that the requirement of an interim report is unnecessary and has modified its recommendation to remove it. The waiver, if granted, would apply to the previous accounting period. Any change in the estate's income would be addressed at the end of the next accounting period. In addition, if the court learns of any concerns, it has the authority to order an accounting before the end of the regular period. The committee agrees and has modified its recommendation to add an order as suggested.

	Commenter	Position	Comment	Committee Response
			training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements include training of staff and judges regarding the new form and implied procedure of receiving the form, routing it for consideration and approval. It would also require implementation of new codes and workflows in Case Management System. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, three months would be sufficient.	
6.	Superior Court of Monterey County by Christopher Haug, Research Attorney	A	Monterey County supports the amendments to the rule and implementation of the optional form.	The committee appreciates the court's comments. No further response is required.
7.	Superior Court of Riverside County by Susan Ryan, Chief Deputy—Legal Services	A	Riverside is in support of this new proposed form. This will streamline the process for filing waivers of accounting in conservatorship and guardianship estates if the estates qualify for the waiver under Probate Code 2628. The new form will also ensure that if a primary residence is owned by a conservatee or ward there is accountability for the fiduciary to provide information that the mortgage payments, real property taxes and HOA if any, are paid and are not delinquent.	The committee appreciates the court's comments. No further response is required.

	Commenter	Position	Comment	Committee Response
			There is no additional cost the court will incur on implementing this form and change.	
8.	Superior Court of San Bernardino County by Court Executive Office	A	**Does the proposal appropriately address the stated purpose?** Yes **Would the proposal provide cost savings? If so, please quantify.** Yes, due to the potential reduction in continuances and a more streamlined review process. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Minimal training required, less than 1 hour- Probate Examiners, Legal Processing Assistants, Judicial Assistants. Potential code updates in the Case Management System. **Would 3 months from the enactment of the proposed legislation until its effective date provide sufficient time for implementation? Or should additional time be requested?** Yes	The committee appreciates the court's comments. No further response is required.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	**Does the proposal appropriately address the stated purpose?** Yes.	The committee appreciates the court's comments. See below for responses to specific comments.

	Commenter	Position	Comment	Committee Response
			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?** If our court chooses to repeal our local form that currently serves this purpose, we would need to notify attorneys/parties of the new form. Our court would need to add this form as a filing in our CMS. If there is no proposed order to accompany this request, our court would need to draft a local form or train courtroom staff to create minute orders to capture the judge's decision on these requests. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **How well would this proposal work in courts of different sizes?** The proposal should work adequately, no matter the size of the court. **General Comments:**	The committee has chosen to recommend the approval of the form for optional use to give each court the opportunity to weigh the costs and benefits of continuing to use its current form or using the proposed form.

SPR19-34

Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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

	Commenter	Position	Comment	Committee Response
			An order to accompany the request or incorporation of an order within the form would be helpful. As-is, if the form is submitted outside of a scheduled hearing, the court will have to issue a separate minute order to memorialize whether the request was granted or denied.	The committee agrees and has modified its recommendation to incorporate an order into the request form.
			Suggest renaming the form: Request for Order Waiving Accounting or Request & Order for Waiver of Accounting. This is more in line with terminology used in Probate.	The committee agrees with the suggestion and has modified its recommendation to rename the form *Request and Order for Waiver of Accounting.*
			Suggest adding language to reflect that an order excusing/waiving an accounting does not waive the requirement to file a final accounting would be helpful.	The committee agrees with the suggestion and has modified its recommendation accordingly.
10.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposed rule makes a helpful change that will allow probate courts to recognize well-established technologies by accepting account statement printouts as original documents.	The committee appreciates the JRS's comments. No further response is required.

Item number: 34

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Graduated Filing Fee in Estate Administration Proceedings

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

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Rules and Forms: Graduated Filing Fee in Estate Administration Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 7.550; repeal rule 7.151

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council amend one rule and repeal one rule of the California Rules of Court to remove references to a graduated filing fee in estate administration proceedings. 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 council repealed two other rules implementing the graduated filing fee scheme, effective January 1, 2015, but did not repeal or amend the rules addressed in this proposal.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 7.550 to repeal subdivision (b)(10), which requires the report mandated by Probate Code section 10954(c)(1) when an account is waived to include the information required by former rule 7.552(a) and (b); and

2. Repeal rule 7.151.

The text of the amended and repealed rules is attached at pages 5–6.

Relevant Previous Council Action

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 implement the legislative establishment of a graduated filing fee in estate administration proceedings.[1]

Effective March 1, 2008, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552 in response to further legislative direction.

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not repeal, or consider repealing, the rules in this proposal.

Analysis/Rationale

The Probate and Mental Health Advisory Committee recommends repealing rule 7.151 and amending rule 7.550 to repeal paragraph 10 of subdivision (b) of that rule to complete the repeal of all rules that implemented the graduated estate administration filing fee declared unconstitutional in *Estate of Claeyssens* (2008) 161 Cal.App.4th 465 (*Burkey*).

In 2003, the Legislature amended former Government Code section 26827 to impose a graduated filing fee on first petitions in estate administration proceedings.[2] The filing fee was based on the value of the estate: the greater the value, the higher the fee.[3] Later that year, the Legislature further amended section 26827(d) to require a subsequent petitioner who had not been 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.[4]

In response to these statutory amendments, the Judicial Council adopted rules 7.151, 7.550(b)(10), and 7.552 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.[5]

---

[1] Unless otherwise specified, all subsequent references to rules are to the California Rules of Court.

[2] Assem. Bill 1759 (Stats. 2003, ch. 159, § 9) (amending former Gov. Code, § 26827 to establish graduated filing fee).

[3] See former Gov. Code, § 26827(a)(1)–(9), as amended by Stats. 2003, ch. 159, § 9.

[4] Assem. Bill 296 (Stats. 2003, ch. 757, § 4) (amending former Gov. Code § 26827(d)).

[5] 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).

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, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552.[6]

Since California voters approved Proposition 6 in 1982, section 13301 of the Revenue and Taxation Code has—except for authorizing recoupment 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.[7] On March 27, 2008, the California Court of Appeal determined that the statutory graduated filing fee operated as an ad valorem tax on decedents' estates. (*Burkey, supra,* 161 Cal.App.4th at pp. 468, 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 statutory 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 trust and estate administration proceedings and replace it with a single uniform filing fee.[8]

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not repeal, or consider repealing, the rules in the current proposal.[9] Adopting this recommendation completes the repeal process.

Policy implications

The recommended amendment and repeal promote at least two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by eliminating misleading rules.

Comments

The proposed recommendation was circulated for public comment to the regular list of persons interested in probate and mental health proposals from April 12 to June 10, 2019, as part of the regular spring comment cycle. Three trial courts and the Orange County Bar Association submitted comments. All commenters agreed with the proposal as circulated.[10]

---

[6] Judicial Council of Cal., Advisory Com. Rep., *Probate: Collection of the Graduated Filing Fee in Decedents' Estates* (Jan. 16, 2008).

[7] 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.

[8] Assem. Bill 171 (Stats. 2008, ch. 310).

[9] 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).

[10] A chart with the full text of the comments received and the committee's responses is attached at pages 7–8.

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 repeal the unconstitutional fees that the rules implemented.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impact on courts or litigants. The trial courts have not had authority to charge a graduated filing fee in estate administration proceedings since January 1, 2009.

Attachments and Links

1. Cal. Rules of Court, rules 7.151 and 7.550, at pages 5–6
2. Chart of spring 2019 comments and committee responses, at pages 7–8

Rule 7.550 of the California Rules of Court is amended and rule 7.151 is 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).~~

SPR19-35

Rules and Forms: Graduated Filing Fee in Probate Proceedings (amend Cal. Rules of Court, rule 7.550; repeal rule 7.151)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	A	The OCBA believes that this proposal appropriately addresses its stated purpose.	The committee appreciates the bar association's comment. No further response is necessary.
2.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	Riverside Superior Court is in support of this legislation clean up as there is no longer the graduating filing fee that is applicable to estate administration proceedings.	The committee appreciates the court's comment. No further response is necessary.
3.	Superior Court of San Bernardino County by Executive Office	A	***Does the proposal appropriately address the stated purpose?*** Yes. ***Would the proposal provide a cost savings? If so, please quantify.*** N/A ***What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.*** N/A ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes.	The committee appreciates the court's comments. No further response is necessary.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	***Does the proposal appropriately address the stated purpose?*** Yes. ***Would the proposal provide cost savings? If so, please quantify.***	The committee appreciates the court's comments. No further response is necessary.

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

	Commenter	Position	Comment	Committee Response
			No. ***What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?*** No. ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes. ***How well would this proposal work in courts of different sizes?*** The proposal should work adequately, no matter the size of the court. No additional comments.	

Item number: 35

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and Forms: Notices of Hearings 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: 4. 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.

6. 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.

If requesting July 1 or out of cycle, explain:

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Rules and Forms: Notices of Hearings in Probate Proceedings

Rules, Forms, Standards, or Statutes Affected
Adopt form DE-115/GC-015; revise form DE-120

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 8, 2019

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends adopting one mandatory form and revising one mandatory form to solicit information and give advisements required by statute in a notice of hearing on a petition filed under Probate Code section 850 and a notice of hearing on a report of status of estate administration filed under Probate Code section 12201. These revisions have been requested by courts and stakeholders. They are needed to conform to existing law, promote access to the courts, and reduce delays to hearings.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Adopt *Notice of Hearing on Petition to Determine Claim to Property* (form DE-115/GC-015) to give the required notice of a hearing on a petition under Probate Code section 850; and

2. Revise *Notice of Hearing—Decedent's Estate or Trust* (form DE-120) to add a required advisement, update instructions, and make technical corrections.

The revised forms are attached at pages 5–8.

Relevant Previous Council Action

The Judicial Council approved *Notice of Hearing of Petition (Probate)* for optional use, effective July 1, 1977. The form was renamed *Notice of Hearing (Probate)* and given the number DE-120, effective July 1, 1988. It was adopted for mandatory use, effective January 1, 2000, and renamed *Notice of Hearing—Decedent's Estate or Trust,* effective July 1, 2005.

Analysis/Rationale

The Probate and Mental Health Advisory Committee recommends adopting form DE-115/GC-015 and revising form DE-120 to implement statutory requirements, promote access to the courts, and reduce delays in the distribution of the proceeds of decedents' estates.

Notice of Hearing on Petition to Determine Claim to Property (form DE-115/GC-015)

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.[1] The bill authorized the 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.[2]

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 a (1) description of the property at issue, (2) description of any relief sought under section 859 for bad-faith conduct or financial abuse, and (3) statement that any person interested in the property may file a response to the petition. Adopting form DE-115/GC-015 ensures that notice of a hearing on a petition filed under section 850 will include all the elements required by section 851.

Notice of Hearing—Decedent's Estate or Trust (form DE-120)

Form DE-120 is used to give notice of hearings in most proceedings under the Probate Code except for guardianships and conservatorships.[3] 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 filed under section 12200 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.)

---

[1] All subsequent statutory references are to the Probate Code unless otherwise specified.

[2] Sen. Com. on Judiciary, Analysis of Sen. Bill No. 669 (2001–2002 Reg. Sess.) as introduced, p. 1.

[3] *Notice of Hearing—Guardianship or Conservatorship* (form GC-020) must be used to give notice of a hearing in a guardianship or conservatorship proceeding.

The revisions to form DE-120 provide space to indicate whether the subject of the noticed hearing is a report of status of decedent's estate administration under section 12200 and add the required statement advising interested persons of their right to petition for an accounting. The revisions also update the instructions for requesting an accommodation under the Americans with Disabilities Act, update statutory references in the form footer, and make minor technical corrections.

Policy implications

The recommended revisions promote access to the courts by providing mechanisms for petitioners and fiduciaries to give notice of hearings in compliance with law.

Comments

The proposed recommendation circulated for public comment to the regular list of persons interested in probate and mental health proposals from April 12 to June 10, 2019, as part of the regular spring comment cycle. The committee received eight comments, including responses from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, five trial courts, the Trusts and Estates section of the California Lawyers Association, and the Orange County Bar Association. Three commenters agreed with the proposal as circulated, and five agreed while suggesting additional revisions.[4]

The commenters suggested mostly minor modifications to the forms' captions, titles, cross-references, and formatting. The committee considered all comments and made several revisions in response.

Alternatives considered

The committee considered not recommending any revisions to form DE-120, given that 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 incorporation of the notices and advisements required by section 851 into form DE-120 and not recommending a separate form for notice of hearing on a section 850 petition. The committee determined, however, that resolving a claim to specific property implicated rights that are 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 properly.

[4] A chart with the full text of the comments received and the committee's responses is attached at pages 9–15.

Fiscal and Operational Impacts

The proposal would require courts to develop processes for using form DE-115/GC-015, 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 and comments from courts, the revisions will probably reduce the frequency with which petitioners and fiduciaries need to correct deficiencies in notices of hearings on section 850 petitions or reports of status of administration. This reduction will, in turn, reduce the frequency of continued hearings and increase the efficiency of case processing.

Attachments and Links

1. Forms DE-115/GC-015 and DE-120, at pages 5–8
2. Chart of spring 2019 comments and committee responses, at pages 9–15
3. Link A: Assem. Bill 308 (Stats. 2017, ch. 32), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB308*

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 ☐ CONSERVATEE ☐ MINOR

NOTICE OF HEARING ON 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 make orders affecting ownership of the property without your input.

1. NOTICE is given that *(name):*
(fiduciary or representative capacity, if any):
has filed a petition entitled *(state complete title):*
under Probate Code section 850 asking for a court order determining a claim or claims 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):*

☐ Continued on Attachment 3.

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 ☐ IN THE MATTER OF *(name):* ☐ DECEDENT ☐ TRUST ☐ CONSERVATEE ☐ MINOR	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 on Petition to Determine Claim to Property* 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 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.
4. a. Date mailed:
   b. Place mailed *(city, state):*
5. ☐ I served with the *Notice of Hearing on Petition to Determine Claim to Property* 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 complete title and briefly describe):**

☐ The filing is a report of the status of a decedent's estate administration made under Probate Code section 12200. See the NOTICE below.

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 the status of a decedent's estate administration made under Probate Code section 12200,

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), notice of a hearing in a guardianship or conservatorship case (see Prob. Code, §§ 1511 and 1822, and use form GC-020), or notice of a hearing on a petition to determine a claim to property (see Prob. Code, § 851, and use form DE-115/GC-015).

Form Adopted for Mandatory Use
Judicial Council of California
DE-120 [Rev. January 1, 2020]

Probate Code, §§ 1211, 1215, 1220, 1230, 12201, 17100, 17203
www.courts.ca.gov

☐ 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 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.
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.

SPR19-36

Rules and Forms: Notices of Hearing in Probate Proceedings (adopt form DE-115/GC-015; revise form DE-120)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	AM	The OCBA believes this proposal appropriately addresses its stated purpose if modified as follows: (1) the new form DE-115/GC–015 should add references to Probate Code §17200.1 at paragraph 1 and at the citation string at the bottom of the form in order to specify that the trust interested parties are also entitled to file these Probate §850 petitions; (2) the new form DE-115/GC–015 should add a box #5 to be checked if the petitioner is seeking costs and attorneys' fees under Probate Code §17211 for any bad faith opposition; and [DE-120] (3) the new "NOTICE" box to cover the Probate Code §10950 accounting rights should reference that it is applicable only if the filing is a report of status "under Probate Code §12200" since that statute and Probate Code §12201 are the only authority for this notice and the reciprocal right to accounting.	The committee appreciates the bar association's comments. The committee does not recommend the suggested change to item 1. Section 17200.1 simply states that a proceeding concerning the transfer of trust property must be conducted under section 850 et seq. Section 850(a)(3) provides the authority for an interested person's petition. The committee does not recommend the suggested change to the citation footer. The statutes listed set forth notice requirements, including the applicable statute for notice in trust proceedings, section 17203. Section 17200.1 does not establish notice requirements and, therefore, does not belong in the footer. The committee does not recommend the suggested change. Section 859 provides remedies, including an award of attorney's fees and costs, for specified bad faith conduct related to property of, among other things, a trust. Section 17211 authorizes the award of fees and costs in accounting contests brought or opposed in bad faith. These are outside the scope of this proposal. The committee agrees with the suggestion and has modified the form accordingly.

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

SPR19-36

Rules and Forms: Notices of Hearing in Probate Proceedings (adopt form DE-115/GC-015; revise form DE-120)

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

	Commenter	Position	Comment	Committee Response
2.	Superior Court of Monterey County by Christopher Haug, Research Attorney	AM	Monterey County proposes a change to form DE-115/GC-015. In the Proof of Service section on page 2, we recommend changing the name of the document in items 3 and 5 to reflect the true name of the document. The Proof of Service currently refers to a "Notice of Hearing—Petition to Determine Claim of Property Ownership" but the new notice is named "Notice of Petition to Determine Claim to Property." If the proof of service is stating what is being served, then the name of the document served should be precise.	The committee agrees that items 3 and 5 on page 2 should reflect the correct title of the form and has modified those items accordingly.
			In addition, Monterey County asks that you consider a change to form DE-120. At the bottom of page 1 of the form is a caution not to use the form for noticing a petition to administer estate or noticing guardianship/conservatorship hearings. In light of the new DE-115/GC-015 notice for 850-petitions, should this new notice also be added to the caution? Possible new caution language: "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), or notice of a petition to determine a claim to property (see Prob. Code, § 851 and use form DE-115/GC-115)."	The committee agrees with the suggestion and has modified the form accordingly.
3.	Superior Court of Orange County Civil, Small Claims, and Probate Division	AM	On form DE-115/GC-015, item #3 asks for a description of each item of real or personal property. This list could become extensive. We	The committee agrees with the suggestion and has modified the form accordingly.

	Commenter	Position	Comment	Committee Response
			recommend including a reference to the use of an Attachment form, as needed.	
4.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	Riverside Superior Court is in support of this proposed mandate. The specific Notice of Hearing forms for each statutory requirement will streamline the process in estate administration. For the Notice of Hearing on the petition filed under Probate Code 850, recent legislation requires the moving party to make statutory allegations in the notice. A new form for this purpose specifically addresses the statutory requirements. In addition, the modification to the Notice of Hearing (DE-120) will also streamline the process when the petitioner files a Report of Status of Administration under Probate Code 12201 in that the form will provide the statutory allegations within the notice. There will be no costs to the court for each of the new forms. There will only be minor operational adjustments so staff is aware how to file each of the new forms in our case management system.	The committee appreciates the court's comments. No further response is required.
5.	Superior Court of San Bernardino County by Executive Office	A	***Does the proposal appropriately address the stated purpose?*** 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.***	The committee appreciates the court's comments. No further response is required.

	Commenter	Position	Comment	Committee Response
			Minimal training-Probate Examiners, Legal Processing Assistants. Potential code updates in the Case Management System.	
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	***Does the proposal appropriately address the stated purpose?*** Yes. ***Would the proposal provide cost savings? If so, please quantify.*** It may potentially reduce continuances for defects regarding notice deficiencies on the 850 petitions. ***What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?*** Minimal training would be required for front-line staff, as well as Probate Examiners and Judicial Officers. Changes would be needed to add the new form name to the CMS. ***Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*** Yes. ***How well would this proposal work in courts of different sizes?*** The proposal should work adequately, no matter the size of the court.	The committee appreciates the court's comments. Please see below for responses to specific comments.

SPR19-36
Rules and Forms: Notices of Hearing in Probate Proceedings (adopt form DE-115/GC-015; revise form DE-120)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			General Comments: **DE-115/GC-015-Notice of Petition to Determine Claim to Property:**	
			• Suggest retitling the form to Notice of Petition to Convey or Transfer Property, which is more in line with the Probate Code.	The committee does not recommend the suggested change. Sections 855 and 856 authorize the court to make orders beyond authorizing a conveyance or transfer. The recommended title of the form reflects the breadth of the court's authority.
			• Suggest using the case caption that is used in the DE-120, but adding checkboxes for Conservatee and Minor. The Trust of…. / Settlor options diverge from current standards used.	The committee agrees with the suggestion and has modified the form accordingly.
			• The form should include, in item #1, a space for the filing party to include the title of the petition, in compliance with CRC, rule 7.50: *The notice of hearing on a pleading filed in a proceeding under the Probate Code must state the complete title of the pleading to which the notice relates.*	The committee agrees with the suggestion and has modified the instructions in item 1 to direct the person completing the form to specify the complete title of the petition or other filing.
			• The form should include a checkbox in item #3, in the event there are multiple properties subject to the 850 petition and additional space is needed for the property descriptions.	The committee agrees that item 3 should include a check box to indicate that the item is continued on an attachment and has modified the form accordingly.
			• The name and address section of the Proof of Service by Mail should include boxes around the name and address and more space to allow	The committee agrees with the suggestion and has modified the name and address section of the proof of service to conform to the format of

	Commenter	Position	Comment	Committee Response
			for hand-writing of various sizes. Refer to current DE-120 for desired format. **DE-120-Notice of Hearing—Decedent's Estate or Trust:** • In item #1, rather than, "…(specify and briefly describe)," it should read, "…(specify complete title). Including this should reduce defects for failure to comply with CRC, rule 7.50, noted above. • At the bottom of pg. 1, in the "Do not use this form…" section, the new form, DE-115/GC-015-*Notice of Petition to Determine Claim to Property*, should be referenced. • The name and address section of the Proof of Service by Mail should include boxes around the name and address and more space to allow for hand-writing of various sizes. Refer to current DE-120 for desired format.	existing form DE-120. The committee agrees with the suggestion and has modified the instructions in item 1 to direct the person completing the form to specify the complete title of the petition or other filing. The committee agrees with the suggestion and has modified the form accordingly. The committee agrees with the suggestion and has modified the name and address section of the proof of service to outline the spaces for inserting names and addresses of persons served.
7.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal is required to conform to a change of law.	The committee appreciates the JRS's comments. No further response is required.
8.	Trusts & Estates Section, Executive Committee (TEXCOM) California Lawyers Association by Carlena L. Tapella, Attorney at Law Sacramento	AM	**DE-115:** It is recommended that the proposed form be entitled "Notice of Hearing of Petition to Determine Claim to Property" Using the name of the settlor, rather than the name of the trust, could be confusing. In addition, most trust proceedings are commenced	The committee agrees with this suggestion and has modified its recommendation accordingly. The committee agrees that using the name of the settlor might be confusing and has modified the form as suggested by the Superior Court of San

	Commenter	Position	Comment	Committee Response
			in the name of the trust, not the settlor. It is therefore recommended that the caption (and top of the second page) be revised to look as follows: [image omitted]. **DE-120:** Including a provision in which the petitioner "briefly describes" the petition, application, report, or account could lead to concerns that the description did not adequately describe the document. It is therefore recommended that this be changed to "has filed a petition, application, report, or account titled (specify):" In addition, it is recommended that there be a checkbox for use of the language that applies only when the filing is a report on status of administration that does not include an accounting, such as: [ ] *Check this box if the filing described in item 1 is a report of status of decedent's administration* – and then include the required statutory language. TEXCOM is concerned that there may be confusion that a recipient might be unsure whether the document is or is not a report on status of administration and will unnecessarily request an accounting to which the recipient may not be entitled.	Diego County. The committee agrees that the form should comply with rule 7.50 and has modified item 1 accordingly. The committee agrees with the suggestion and has added a checkbox to item 1 to indicate that the filing is a report made under section 12200.

Item number: 36

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship and Guardianship: Qualifications and Education of Appointed Counsel (adopt Cal. Rules of Court, rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105; repeal rule 7.1101; revise form GC-010; revoke form GC-011)

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: Recirculate proposal to amend rule 7.1101 and revise forms GC-010 and GC-011 to improve implementation of Probate Code section 1456's requirements concerning qualifications and continuing education requirements for counsel appointed by the court in conservatorship, guardianship, and other protective proceedings.

If requesting July 1 or out of cycle, explain:

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Probate Conservatorship and Guardianship: Qualifications and Education of Appointed Counsel

Rules, Forms, Standards, or Statutes Affected
Adopt rules 7.1101–7.1105; repeal rule 7.1101; revise form GC-010; revoke form GC-011

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 19, 2019

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends repealing one rule of court and adopting five rules to update the minimum qualifications and annual education required for counsel to be appointed by the court under Probate Code sections 1470 and 1471 to represent wards and conservatees in proceedings under division 4 of the Probate Code. The committee also recommends revising one form for attorneys to certify their eligibility for appointment, approving the revised form for optional use, and revoking a second certification form. The amendments and revisions respond to suggestions from courts, stakeholders, and advocates to tailor the required qualifications and education more closely to statute, ensure the knowledge and experience needed for effective representation, and simplify the certification process.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Repeal rule 7.1101 of the California Rules of Court;

2. Adopt rule 7.1101 to specify the scope of the chapter, define the terms used in the chapter, and establish general qualifications for appointed counsel;

3. Adopt rule 7.1102 to specify minimum qualifications and annual education related to guardianships required for an attorney to be appointed under Probate Code section 1470 to represent a ward or proposed ward in a guardianship or other proceeding under division 4 of the Probate Code;

4. Adopt rule 7.1103 to specify minimum qualifications and annual education related to conservatorships and legal capacity required for an attorney to be appointed under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity in a conservatorship or other proceeding under division 4 of the Probate Code;

5. Adopt rule 7.1104 to affirm a court's authority to establish local procedures to administer appointment of qualified attorneys and authorize the court, on an express finding of necessity, to appoint an attorney who does not meet the minimum qualifications or annual education requirements in rule 7.1102 or 7.1103;

6. Adopt rule 7.1105 to specify initial and annual certification requirements;

7. Revise *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to conform to the amended certification requirements, incorporate annual certification, simplify the certification process, and approve the form for optional use; and

8. Revoke *Annual Certification of Court-Appointed Attorney* (form GC-011).

The text of the recommended rules, the revised form, and the revoked form are attached at pages 12–27.

Relevant Previous Council Action

The Judicial Council adopted rule 7.1101, effective January 1, 2008, in response to the mandate in section 1456 of the Probate Code and placed the rule in chapter 23 of the Probate Rules, title 7 of the California Rules of Court. Form GC-010 was adopted for mandatory use, effective March 1, 2008. Form GC-011 was adopted for mandatory use, effective January 1, 2009.

Analysis/Rationale

Probate Code section 1456(a) requires the Judicial Council to adopt a rule of court specifying the qualifications, number of hours of annual education "in classes related to conservatorships or guardianships," "particular subject matter" to be included in the required annual education, and reporting requirements for any attorney appointed by the court under Probate Code section 1470

or 1471.[1] Section 1470(a) authorizes the court to appoint private counsel for "a ward, a proposed ward, a conservatee, or a proposed conservatee" in any proceeding under division 4 of the Probate Code if the court determines the person is not represented and that the appointment "would be helpful to the resolution of the matter" or "is necessary to protect the person's interests." (Prob. Code, § 1470(a).) Section 1471 mandates court appointment of the public defender or private counsel to represent the interests of "a conservatee, proposed conservatee, or person alleged to lack legal capacity" at the person's request in specified conservatorship proceedings (*id.,* § 1471(a)); in the absence of a request in those same proceedings if the person does not plan to retain counsel and appointment "would be helpful to the resolution of the matter" or "is necessary to protect the [person's] interests" (*id.,* § 1471(b)); and immediately, whether requested or not, in any proceeding to establish a limited conservatorship if the proposed conservatee has not retained and does not plan to retain legal counsel. (*id.,* § 1471(c)).[2]

Rule 7.1101 of the California Rules of Court[3] was adopted to implement the mandate in section 1456. In the years since its adoption, however, the rule has proven challenging to implement, burdensome on attorneys, and inadequate to ensure the protection of represented persons. The recommended repeal of existing rule 7.1101, reorganization of chapter 23 of title 7 into 5 separate rules, and amendment of the existing requirements are intended to address these issues and better implement the statute's requirements.

New rule 7.1101

The first recommended rule clarifies the scope of the chapter's application, defines certain terms as used in the rules, and establishes general qualifications. Subdivision (a) specifies that chapter 23 applies only to counsel appointed under sections 1470 and 1471. It does not, as some have interpreted, apply to counsel appointed under other statutory authority or to retained counsel. Subdivision (b) amends the definitions of several terms in existing rule 7.1101(a); deletes the definition of "counsel in private practice," which is no longer used in chapter 23; and adds a new

[1] Prob. Code, § 1456(a)(1), (3)–(5). Probate Code section 1456 was added by Assembly Bill 1363 (Stats. 2006, ch. 493, § 3), part of the Omnibus Conservatorship and Guardianship Reform Act of 2006. The Omnibus Act comprised four separate bills—*Senate Bill 1116*, *Senate Bill 1550*, *Senate Bill 1716*, and *Assembly Bill 1363*—enacted as Stats. 2006, chs. 490–493, respectively, to address perceived abuses of the conservatorship process by court-appointed conservators. All further statutory references are to the Probate Code unless otherwise specified.

[2] In addition to the proceedings specified in section 1471(a)(1)–(5), other sections of the Probate Code invoke the authority of section 1471 to require appointment of counsel. (See, e.g., Prob. Code, §§ 1852 (if the court determines that the conservatee wishes to petition the court to terminate the conservatorship or for other specified orders); 2356.5 (petition for order authorizing placement or medication of person with major neurocognitive disorder); 2357 (petition for order authorizing medical treatment); 3140 (petition to approve transaction, spouse alleged to lack capacity); 3205 (petition to determine patient's capacity to make health care decision).) Because these appointments depend on the authority of section 1470 or 1471, the requirements in recommended rules 7.1101–7.1105 apply.

Still other sections authorize or require appointment of counsel independent of the authority in section 1470 or 1471. (See, e.g., Prob. Code, §§ 1954 (petition for authority to consent to person's sterilization); 2620.2 (failure of appointed fiduciary to file accounting).) Neither section 1456 nor the rules in this proposal establish qualifications or education requirements for appointment under section 1954 or 2620.2. Courts are encouraged to establish local requirements for appointment under these provisions.

[3] All further rule references are to the California Rules of Court unless otherwise specified.

definition of "trial." The definition of "appointed counsel" clarifies that the term means an attorney appointed by the court who assumes direct, personal responsibility for representation.

Subdivision (c) establishes basic licensing, disciplinary status, and liability insurance requirements that all appointed attorneys must meet. Attempting to increase access to appointments for recently admitted attorneys, it no longer requires an attorney to have been an active bar member for three years before initial appointment and allows appointment of registered legal aid attorneys qualified to practice law in California under rule 9.45. Subdivision (c) also applies the same professional liability coverage requirements to all attorneys regardless of their practice setting, incorporates by reference the specific qualifications and education requirements in rules 7.1102 and 7.1103 for each type of appointment, and requires compliance with any local rules established by the appointing court. Subdivision (d) clarifies that a court has the authority to adopt additional, more rigorous requirements by local rule, and subdivision (e) states that the new rules do not apply retroactively, freeing an attorney who has already filed an initial certification of qualifications from the requirement to file a new one.

New rules 7.1102 and 7.1103

The second and third rules form the heart of chapter 23. Each establishes a distinct set of qualifications and education requirements to represent a distinct set of clients.

Rule 7.1102

This rule applies to attorneys available for appointment to represent wards or proposed wards in probate guardianships and related proceedings. Except for authorizing qualification by representation of three petitioners or objectors in addition to three proposed wards and requiring experience in at least one contested matter or trial, the experience-based qualifications in rule 7.1102(a) do not differ substantially from those in the existing rule. An attorney may still qualify by meeting the experience required for appointment in child welfare proceedings or family law custody proceedings, too.

Rule 7.1102(b) establishes alternative qualifications through which less-experienced attorneys may become eligible for appointment. The first alternative allows appointment of an attorney who works for an attorney, a firm, or a court-approved legal services organization to be appointed without the experience in subdivision (a) if the attorney is supervised by or working in close consultation with a qualified attorney who meets the experience requirements. The second alternative, intended to allow sole practitioners to qualify, allows appointment of an attorney who has completed, within the 12 months preceding initial availability for appointment, three hours of professional education in the subjects required for annual education (see below) if the attorney is working in close consultation with a qualified attorney who meets the experience requirements.

Subdivisions (c) and (d) require three hours of annual education in subjects directly related to guardianships and child representation. To ensure that an appointed attorney has adequate knowledge related to guardianships, the committee has separated these hours from the hours required for appointment related to conservatorships and narrowed the range of applicable

subjects. To ensure that attorneys have access to education in these subjects, the rule authorizes completion of the required education using any method of education, including distance learning, approved by the State Bar. The committee is working with Judicial Council staff to develop and provide webinars and other online training that will enable attorneys to meet the requirements at no cost.

Rule 7.1103

This rule applies to attorneys available for appointment to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity in probate conservatorships and related proceedings. Rule 7.1103(a) narrows and consolidates the experience-based qualifications for these attorneys. In addition to having represented at least three conservatees or proposed conservatees in probate or mental health conservatorships, an attorney may now qualify for appointment by virtue of having represented three petitioners, objectors, persons alleged to lack legal capacity, or persons alleged to be gravely disabled in any proceedings under division 4 of the Probate Code or the Lanterman-Petris-Short (LPS) Act.[4] To simplify the requirements, no type of representation need be combined with any other type. The committee has also eliminated two existing avenues of experience-based qualification: representation of a fiduciary on a petition to approve an accounting and preparation of estate planning documents. The relevance of these types of experience to conservatorship proceedings is too attenuated to justify their continued inclusion.[5]

Like rule 7.1102(b), rule 7.1103(b) establishes alternative qualifications through which less-experienced attorneys may become eligible for appointment. The first alternative allows appointment of an attorney who works for an attorney, a firm, a public defender's office, or a court-approved legal services organization to be appointed without the experience in subdivision (a) if the attorney is supervised by or working in close consultation with a qualified attorney who meets the experience requirements.[6] The second alternative, intended to allow sole practitioners to qualify, allows appointment of an attorney who has completed, within the 12 months preceding initial availability for appointment, three hours of professional education in the subjects required for annual education (see below) if the attorney is working in close consultation with a qualified attorney who meets the experience requirements.

---

[4] Welf. & Inst. Code, §§ 5000–5556. The LPS Act authorizes involuntary detention, treatment, and conservatorship of persons who are gravely disabled as the result of a mental health disorder. In many superior courts, LPS proceedings are heard by the probate division.

[5] This conclusion is reinforced by the independence of the authority to appoint counsel for a conservatee when a conservator fails to file an account from the appointment authority in section 1470 or 1471. See Prob. Code, § 2620.2(c)(4)(A) and *supra,* note 2.

[6] These rules no longer expressly distinguish private counsel from deputy public defenders. The requirements needed to accommodate the differences in practice models, both public and private, have been retained in generally applicable rules. See, e.g., Cal. Rules of Court, rules 7.1101(c)(3) (insurance or self-insurance), 7.1103(b) (alternative qualifications).

Subdivisions (c) and (d) require three hours of annual education in subjects directly related to conservatorships and the representation of older adults or persons with disabilities. To ensure that an appointed attorney has adequate knowledge related to conservatorships, the committee has separated these hours from the hours required for appointment related to guardianships and narrowed the range of applicable subjects. To ensure that attorneys have access to education in these subjects, the rule authorizes completion of the required education using any method of education, including distance learning, approved by the State Bar. The committee is working with Judicial Council staff to develop and provide webinars and other online training that will enable attorneys to meet the requirements at no cost.

New rule 7.1104

This rule affirms local courts' authority to establish additional procedural requirements for appointment. It also replaces the existing exemption for courts with four or fewer authorized judges with a narrower exception that can apply to a court of any size. In consideration of the needs of both courts and persons to be represented, the committee recommends expanding the authority to make an exception to the qualifications and education requirements from courts with four or fewer authorized judges to all courts. At the same time, the committee recommends authorizing appointment under the exception only on an express finding of necessity. That necessity could include a lack of qualified attorneys available to accept appointment or the need to appoint an attorney with specific qualifications to meets the needs—including, for example, language access needs—or interests of the person to be represented.

New rule 7.1105

Rule 7.1105 amends the requirements in existing rule 7.1101(h) for initial and annual attorney certification of qualifications. The new rule separates certification of basic licensing, disciplinary status, and insurance requirements from certification of qualifications related to the type of representation for which the attorney wishes to be available for appointment and the annual education requirements. It also amends the requirement to notify the court of professional discipline, requiring notification in writing within five court days. The rule affirms a local court's authority to require documentation of any statement in the certification and requires the form to be kept confidential by the receiving court.[7]

Forms GC-010 and GC-011

The recommended revisions to Judicial Council form GC-010 conform to the requirements in the new rules, simplify the certification process by breaking the form into separate elements—licensing and discipline; insurance; initial qualifications; and annual education—and incorporating the elements needed for annual certification, giving clear instructions for completing each element required for either initial or annual certification, and providing

[7] The transitional provisions in existing rule 7.1101(d) and the reporting provision in existing rule 7.1101(i) have been eliminated and not replaced. The reporting provision is not needed because certification to the appointing court is sufficient to ensure that attorneys comply with the requirements. The transitional provisions are not needed because the rules apply only prospectively.

sufficient blank space for additional information required by the rules, the form instructions, or local requirements. With the incorporation of the annual certification into form GC-010, form GC-011 is no longer needed and can be revoked without loss of function.

Policy implications

The recommendation implements a statutory mandate. In line with the statutory purpose, the recommendation also improves the quality of justice and service to the public by ensuring that wards and conservatees subject to judicial proceedings that affect their fundamental interests receive effective legal representation by qualified and well-trained attorneys.

Comments

The proposal was circulated for public comment to the standard list of persons and institutions interested in probate and mental health proceedings twice: once as a single rule in spring 2018 and again as five separate rules in winter 2019. Ten commenters, including three superior courts, three advocacy organizations, the Executive Committee of the Trusts and Estates section (TEXCOM) of the California Lawyers Association, and the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, responded in spring 2018. A chart with the full text of all comments received in spring 2018 and the committee's updated responses is included as Attachment A.

Five commenters agreed with the proposal, four agreed and suggested modifications, and one, TEXCOM, did not agree. Most commenters, even those that agreed, offered suggestions for improving the proposal. The suggestions tended to reflect one of two opposed positions. TEXCOM and some courts thought the proposal went too far by requiring experience within the three years immediately preceding initial availability for appointment rather than the existing five; narrowing the types of qualifying experience and the subject matter of qualifying education; increasing the hours of annual education required to eight, and adding a requirement for initial education. They were concerned that the increased burden would discourage attorneys from making themselves available for appointment under sections 1470 and 1471. Other commenters thought the proposal did not go far enough, and suggested that the committee require more annual education in a wider variety of subjects and establish ethical and performance standards for attorneys appointed under sections 1470 and 1471. Committee members' views diverged along similar lines.

After deliberation, the committee circulated for public comment a significantly revised version of the proposal, separated into five proposed rules, to the same list of persons and institutions in winter 2019. The proposed rules separated the qualifications and education requirements for attorneys appointed to represent wards from those appointed to represent conservatees. They also returned the time frame for qualifying experience to five years before initial availability for appointment, reduced the hours of required education, and made other changes in response to the comments received.

Nine commenters, including three superior courts, TEXCOM, the JRS, and the Probate Committee of the California Judges Association (CJA), responded. Three commenters agreed

with the proposal as circulated, four agreed and suggested modifications, one (TEXCOM) indicated no position but remained concerned, and one, CJA, did not agree. A chart with the full text of all comments received in winter 2019 and the committee's responses is attached at pages 28–48. The comments were again split between a majority that argued the requirements were too rigorous and would discourage attorneys from qualifying and making themselves available for appointment and a minority that argued the requirements were insufficient to ensure that appointed attorneys would be qualified to represent their clients effectively. Many of the committee's decisions discussed above regarding the recommended rules were made in response to issues raised in public comment. Additional responses to comments are discussed below.

Several commenters expressed concern that the education requirements would be too burdensome on attorneys. TEXCOM, in particular, suggested reducing the hours of required annual education to three for eligibility in one field and four—two in each—for eligibility in both fields. The committee does not recommend reducing these requirements any further. The knowledge required to represent a minor child in a guardianship proceeding is sufficiently distinct from the knowledge required to represent an adult in a conservatorship or capacity proceeding that separate education requirements covering distinct subject matter are appropriate. Three hours seems to be the minimum time required to cover each set of subjects in sufficient depth. The committee does not view six hours of education per year to be excessively burdensome for attorneys who want to be eligible for appointment to represent wards and conservatees. The committee recognizes that education meeting the subject matter requirements may be difficult to find. The committee has reduced the number of required subjects while keeping them focused on guardianships or conservatorships as required by statute, and has authorized delivery of qualifying education through any distance learning method approved by the State Bar. Finally, to increase the statewide availability of education that allows attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable webinars and other online courses that will be available, at no cost, in time to permit their completion by January 1, 2021, the first deadline to complete annual education under these rules.

Two commenters expressed concern that the alternative qualifications in rules 7.1102(b) and 7.1103(b)—which, as circulated, required an inexperienced attorney to be "supervised by" an experienced attorney as a condition of qualification for appointment—would, in conjunction with rule 5.1(c)(2) of the Rules of Professional Conduct, impose a duty on the experienced attorney to remedy a known ethical violation by the inexperienced attorney.[8] The committee agrees that the requirement as circulated could have been interpreted to require the experienced attorney to have "direct supervisory authority" over the inexperienced attorney and, therefore, a duty to remedy a known ethical violation. The committee does not intend to require the experienced attorney to assume that duty as a condition of the inexperienced attorney's qualification for appointment

[8] See Rules Prof. Conduct, rule 5.1(c): "A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if: … (2) the lawyer … has *direct supervisory authority* over the other lawyer, whether or not a member or employee of the same law firm,* *and knows** of the conduct at a time when its consequences can be avoided or mitigated *but fails to take reasonable* remedial action."* (Italics added.)

under rule 7.1102(b) or 7.1103(b). To clarify this intent, the committee has revised the rules to allow an inexperienced attorney to meet the alternative qualifications in part by working in close professional consultation with *or* under the supervision of an experienced attorney. The committee intends "working in close professional consultation" to describe a professional relationship in which the inexperienced attorney receives the benefit of the experienced attorney's knowledge and skills and applies them to provide effective representation.[9] Consulting attorneys may wish to make clear from the outset the scope and limits of their relationship to avoid unanticipated ethical issues.

In response to the committee's request for specific comment, two commenters suggested expanding the authority to appoint an attorney who does not meet the qualifications and annual education requirements in the rules. The committee agrees that the exception to the requirement to appoint only qualified attorneys, currently available only to courts with four or fewer authorized judges, should be expanded to apply to all courts. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of an exception. The existing rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in the court and is therefore somewhat arbitrary. Reported data for court filings appear to vary in completeness among courts, so an exception based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise in any court in which it may be necessary to appoint an attorney who is not certified under these rules but who has other special qualifications needed to serve the interests of a specific client. The committee has therefore modified its recommendation to authorize a court of any size to appoint an attorney who has not met the qualifications or annual education requirements in rule 7.1102 or 7.1103 on an express finding of necessity, which may include the lack of available qualified counsel or the need for special skills to serve a client's interests.

Alternatives considered

The committee considered not amending rule 7.1101. However, committee members, courts, and stakeholders across the state reported inconsistent and sometimes inadequate experience and education of counsel appointed under sections 1470 and 1471. In addition, the committee determined that the existing rule's authorization of experience and education in general estate planning and probate law was not fully consistent with the statute's express requirements regarding conservatorships and guardianships.

The committee considered amending rule 7.1101 as a single rule and circulated proposed amendments for public comment in spring 2018. In response to the wide range of opinion reflected in the comments received, some of which was based on a lack of clarity in the circulated rule, the committee divided the rule into several rules, each serving a specific purpose.

[9] For the inexperienced attorney to meet the alternative qualifications, the experienced attorney may, but need not, have direct supervisory authority over the inexperienced attorney. Whether the experienced attorney has that authority and the resulting duty to remedy a known ethical violation by the inexperienced attorney is a question of fact independent of whether the inexperienced attorney is qualified under these rules.

The comments generally approved of the division of the rules, but also reflected some misunderstandings based on continued complexity and lack of clarity. In response, the committee simplified the rules by restructuring them, reducing the complexity of some requirements, and addressing the ambiguity of others.

The committee also proposed or considered proposing several rule amendments that are not included in this final recommendation. First, the committee considered proposing a separate rule applying only to representation in limited conservatorships, but decided to address limited conservatorships with all probate conservatorships in rule 7.1103. This approach aligns with the structure of the Probate Code, which integrates limited conservatorships into its conservatorship provisions to the extent of authorizing the court to appoint a conservator or a limited conservator if a proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for personal needs or manage finances. (Prob. Code, § 1828.5(d).)

Second, the committee considered whether to specify the role and duties of an attorney appointed by the court under section 1470 or 1471. However, it is generally the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules of Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the role and duties of an attorney and to authorize any exceptions in specific circumstances. When the Judicial Council *has* entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j) (court-appointed minor's counsel represents "the child's best interest".) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of annual education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance with the statute. Nothing in sections 1456, 1470, or 1471 specifies—or invites the council to specify—the role and duties of appointed counsel. The committee has therefore declined to specify those duties in the proposed rules.

Third, the committee proposed requiring an attorney to complete initial education, in addition to experience, to qualify for appointment. In response to comments, and recognizing that such a requirement would be a significant change from the existing rule that would leave many appointed attorneys no longer qualified, the committee removed that requirement from its recommendation. The committee also considered several different types and configurations of experience-based qualifications, especially related to conservatorships, but ultimately decided that experience representing any three parties in separate probate or LPS conservatorships or protective proceedings, including one contested matter or trial, would be adequate to enable an attorney to provide effective representation.

Fiscal and Operational Impacts

The recommendation should lead to more qualified attorneys available for appointment under section 1470 and 1471. Although the amendments have eliminated some options for qualification, such as completion of estate planning documents, they have given more weight to

other qualifications, such as experience representing petitioners or objectors in conservatorship proceedings, and authorized alternative qualifications. The amended annual education hours and subject matter will impose a small burden on attorneys, but this will be alleviated by provision of online qualifying education at no cost through the Judicial Council, and will equip more attorneys with the knowledge they need to represent their clients effectively. The recommended revisions to form GC-010 and revocation of form GC-011 will reduce the time attorneys and courts spend completing and processing forms. The committee believes that the recommendation, taken as a whole, will lead to more counsel qualified for appointment, more effective representation of wards and conservatees, and better-informed judicial determinations.

Attachments and Links

1. Cal. Rules of Court, rules7.1101, 7.1102, 7.1103, 7.1104, and 7.1105, at pages 12–24
2. Forms GC-010 and GC-011, at pages 25–27
3. Chart of winter 2019 comments and committee responses, at pages 28–48
4. Attachment A: Chart of comments on SPR18-33 [this proposal circulated for comment twice, and the chart from the first comment cycle is provided as background]
5. Attachment B: Table comparing existing requirements with recommended requirements
6. Link A: Prob. Code, § 1456, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1456*
7. Link B: Prob. Code, § 1470, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1470*
8. Link C: Prob. Code, § 1471, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1471*

Rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105 of the California Rules of Court are adopted and rule 7.1101 is repealed, effective January 1, 2020, to read:

Chapter 23. ~~Court-~~Appointed Counsel ~~in Probate Proceedings~~

~~Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships~~

~~(a) Definitions~~

~~As used in this rule, the following terms have the meanings stated below:~~

~~(1) "Appointed counsel" or "counsel appointed by the court" are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders directly responsible for the performance of legal services under the court's appointment of a county's public defender.~~

~~(2) A "probate guardianship" or "probate conservatorship" is a guardianship or conservatorship proceeding under division 4 of the Probate Code.~~

~~(3) "LPS" and "LPS Act" refer to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.~~

~~(4) An "LPS conservatorship" is a conservatorship proceeding for a gravely disabled person under chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.~~

~~(5) A "contested matter" in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections are filed by any party or made by the conservatee or proposed conservatee orally in open court.~~

~~(6) "Counsel in private practice" includes attorneys employed by or performing services under contracts with nonprofit organizations.~~

~~(b) Qualifications of appointed counsel in private practice~~

~~Except as provided in this rule, each counsel in private practice appointed by the court on or after January 1, 2008, must be an active member of the State Bar of California for at least three years immediately before the date of appointment, with no discipline imposed within the 12 months immediately preceding any date of availability for appointment after January 1, 2008; and~~

~~(1) *Appointments to represent minors in guardianships*~~

~~For an appointment to represent a minor in a guardianship:~~

~~(A) Within the five years immediately before the date of first availability for appointment after January 1, 2008, must have represented at least three wards or proposed wards in probate guardianships, three children in juvenile court dependency or delinquency proceedings, or three children in custody proceedings under the Family Code; or~~

~~(B) At the time of appointment, must be qualified:~~

~~(i) For appointments to represent children in juvenile dependency proceedings under rule 5.660 and the court's local rules governing court-appointed juvenile court dependency counsel; or~~

~~(ii) For appointments to represent children in custody proceedings under the Family Code under rule 5.242, including the alternative experience requirements of rule 5.242(g).~~

~~(C) Except as provided in (f)(2), counsel qualified for appointments in guardianships under (B) must satisfy the continuing education requirements of this rule in addition to the education or training requirements of the rules mentioned in (B).~~

~~(2) *Appointments to represent conservatees or proposed conservatees*~~

~~For an appointment to represent a conservatee or a proposed conservatee, within the five years immediately before the date of first availability for appointment after January 1, 2008, counsel in private practice must have:~~

~~(A) Represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships; or~~

~~(B) Completed any three of the following five tasks:~~

~~(i) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;~~

~~(ii) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party in two contested probate~~

~~or LPS conservatorship matters. A contested matter that qualifies under this item and also qualifies under (i) may be applied toward satisfaction of both items;~~

~~(iii) Represented a party for whom the court could appoint legal counsel in a total of three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;~~

~~(iv) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under division 9 of the Probate Code; or~~

~~(v) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.~~

~~(3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must also be covered by professional liability insurance satisfactory to the court in the amount of at least $100,000 per claim and $300,000 per year.~~

~~(c) Qualifications of deputy public defenders performing legal services on court appointments of the public defender~~

~~(1) Except as provided in this rule, beginning on January 1, 2008, each county deputy public defender with direct responsibility for the performance of legal services in a particular case on the appointment of the county public defender under Probate Code sections 1470 or 1471 must be an active member of the State Bar of California for at least three years immediately before the date of appointment; and either~~

~~(A) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships; or~~

~~(B) Have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in postcertification judicial proceedings or conservatorships under the LPS Act.~~

~~(2) A deputy public defender qualified under (1) must also be covered by professional liability insurance satisfactory to the court in the amount of at~~

least $100,000 per claim and $300,000 per year, or be covered for professional liability at an equivalent level by a self-insurance program for the professional employees of his or her county.

(3) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy public defender with direct responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

(d) Transitional provisions on qualifications

(1) Counsel appointed before January 1, 2008, may continue to represent their clients through March 2008, whether or not they are qualified under (b) or (c). After March 2008, through conclusion of these matters, the court may retain or replace appointed counsel who are not qualified under (b) or (c) or may appoint qualified co-counsel to assist them.

(2) In January, February, and March 2008, the court may appoint counsel in new matters who have not filed the certification of qualifications required under (h) at the time of appointment but must replace counsel appointed under this paragraph who have not filed the certificate before April 1, 2008.

(e) Exemption for small courts

(1) Except as provided in (2) and (3), the qualifications required under (b) or (c) may be waived by a court with four or fewer authorized judges if it cannot find qualified counsel or for other grounds of hardship.

(2) A court described in (1) may, without a waiver, appoint counsel in private practice who do not satisfy the insurance requirements of (b)(3) if counsel demonstrate to the court that they are adequately self-insured.

(3) A court may not waive or disregard the self-insurance requirements of (c)(2) applicable to deputy public defenders.

(4) A court waiving the qualifications required under (b) or (c) must make express written findings showing the circumstances supporting the waiver and disclosing all alternatives considered, including appointment of qualified counsel from adjacent counties and other alternatives not selected.

~~(f) Continuing education of appointed counsel~~

~~(1) Except as provided in (2), beginning on January 1, 2008, counsel appointed by the court must complete three hours of education each calendar year that qualifies for Minimum Continuing Legal Education credit for State Bar certified specialists in estate planning, trust, and probate law.~~

~~(2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and who are appointed to represent minors in guardianships of the person only may satisfy the continuing education requirements of this rule by satisfying the annual education and training required under rule 5.242(d) or the continuing education required under rule 5.660(d)(3).~~

~~(g) Additional court-imposed qualifications, education, and other requirements~~

~~The qualifications in (b) and (c) and the continuing education requirement in (f) are minimums. A court may establish higher qualification or continuing education requirements, including insurance requirements; require initial education or training; and impose other requirements, including an application by private counsel.~~

~~(h) Initial certification of qualifications; annual post-qualification reports and certifications~~

~~(1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, including deputy public defenders, must certify to the court in writing before April 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.~~

~~(2) After March 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.~~

~~(3) Each counsel appointed or eligible for appointment by the court under this rule must immediately advise the court of the imposition of any State Bar discipline.~~

~~(4) Beginning in 2009, each appointed counsel must certify to the court before the end of March of each year that:~~

~~(A) His or her history of State Bar discipline and professional liability insurance coverage or, if appointed by a court with four or fewer authorized judges under (e)(2), the adequacy of his or her self-~~

~~insurance, either has or has not changed since the date of his or her qualification certification or last annual certification; and~~

~~(B) He or she has completed the continuing education required for the preceding calendar year.~~

~~(5) Annual certifications required under this subdivision showing changes in State Bar disciplinary history, professional liability insurance coverage, or adequacy of self-insurance must include descriptions of the changes.~~

~~(6) Certifications required under this subdivision must be submitted to the court but are not to be filed or lodged in a case file.~~

~~(i) Reporting~~

~~The Judicial Council may require courts to report appointed counsel's qualifications and completion of continuing education required by this rule to ensure compliance with Probate Code section 1456.~~

Rule 7.1101. Scope, definitions, and general qualifications

(a) Scope

The rules in this chapter establish minimum qualifications, annual education requirements, and certification requirements that an attorney must meet as conditions of court appointment as counsel under Probate Code section 1470 or 1471 in a proceeding under division 4 of that code.

(1) The rules in this chapter apply to an appointed attorney regardless of whether the attorney is a sole practitioner or works for a private law firm, a legal services organization, or a public defender's office.

(2) The rules in this chapter do not apply to:

(A) Retained counsel; or

(B) Counsel in any proceeding—including a proceeding under the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000–5556)—in which appointment is not governed by Probate Code section 1470 or 1471.

(b) Definitions

For purposes of this chapter, the following terms are used as defined below:

(1) "Appointed counsel" or "appointed attorney" means an attorney appointed by the court under Probate Code section 1470 or 1471 who assumes direct personal responsibility for representing a ward or proposed ward, a conservatee or proposed conservatee, or a person alleged to lack legal capacity in a proceeding under division 4 of the Probate Code.

(2) "Probate guardianship" means any proceeding related to a general or temporary guardianship under division 4 of the Probate Code.

(3) "Probate conservatorship" means any proceeding related to a conservatorship or limited conservatorship, general or temporary, under division 4 of the Probate Code.

(4) "LPS Act" refers to the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000–5556), which provides for involuntary mental health treatment and conservatorship for persons who are gravely disabled as the result of a mental health disorder.

(5) A "contested matter" is a matter that requires a noticed hearing and in which an objection is filed in writing or made orally in open court by any person entitled to appear at the hearing and support or oppose the petition.

(6) "Trial" means the determination of one or more disputed issues of fact by means of an evidentiary hearing.

(c) General qualifications

To qualify for any appointment under Probate Code section 1470 or 1471, an attorney must:

(1) Be an active member in good standing of the State Bar of California or a registered legal aid attorney qualified to practice law in California under rule 9.45;

(2) Have had no professional discipline imposed in the 12 months immediately preceding the date of submitting any initial or annual certification of compliance; and

(3) Have demonstrated to the court that the attorney or the attorney's firm or employer:

(A) Is covered by professional liability insurance with coverage limits no less than $100,000 per claim and $300,000 per year; or

(B) Is covered for professional liability at an equivalent level through a self-insurance program;

(4) Have met the applicable qualifications and annual education requirements in this chapter and have a current certification on file with the appointing court; and

(5) Have satisfied any additional requirements established by local rule.

(d) Local rules

The rules in this chapter establish minimum qualifications and requirements. Nothing in this chapter prohibits a court from establishing, by local rule adopted under rule 10.613, additional or more rigorous qualifications or requirements.

(e) Retroactivity

The amendments to this chapter adopted effective January 1, 2020, are not retroactive. They do not require an attorney who submitted an initial certification of qualifications under this chapter as it read on or before December 31, 2019, to submit a new initial certification.

Rule 7.1102. Qualifications and annual education required for counsel appointed to represent a ward or proposed ward (§§ 1456, 1470(a))

Except as provided in rule 7.1104(b), an attorney appointed for a ward or proposed ward must have met the qualifications in either (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

(a) Experience-based qualifications

An attorney is qualified for appointment if the attorney has met the experience requirements described in either (1) or (2).

(1) Within the five years immediately before first availability for appointment, the attorney has personally represented a petitioner, an objector, a respondent, a minor child, or a nonminor dependent in at least three of any combination

of the following proceedings, at least one of which must have been a contested matter or trial:

(A) A probate guardianship proceeding;

(B) A juvenile court child welfare proceeding; or

(C) A family law child custody proceeding.

(2) At the time of first availability for appointment, the attorney meets the experience requirements:

(A) In rule 5.660(d) and any applicable local rules for appointment to represent a minor child or nonminor dependent in a juvenile court child welfare proceeding; or

(B) In rule 5.242(f) for appointment to represent a minor child in a family law child custody proceeding.

(b) Alternative qualifications

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

(1) At the time of appointment, the attorney works for an attorney, a private law firm, or a legal services organization approved by the court for appointment under Probate Code section 1470 to represent wards or proposed wards, and the attorney is supervised by or working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a); or

(2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d) and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

(c) Annual education

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a ward or proposed ward must complete at least three hours

of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

(d) Subject matter and delivery of education

Education in the following subjects—delivered in person or by any State Bar-approved method of distance learning—may be used to satisfy this rule's education requirements:

(1) State and federal statutes—including the federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901–1963)—rules of court, and case law governing probate guardianship proceedings and the legal rights of parents and children;

(2) Child development, including techniques for communicating with a child client; and

(3) Risk factors for child abuse and neglect and family violence.

Rule 7.1103. Qualifications and annual education required for counsel appointed to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity (§§ 1456, 1470(a), 1471)

Except as provided in rule 7.1104(b), an attorney appointed to represent the interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity must have met the qualifications in (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

(a) Experience-based qualifications

An attorney is qualified for appointment if, within the five years immediately preceding first availability for appointment, the attorney has personally represented a petitioner, an objector, a conservatee or proposed conservatee, or a person alleged to lack legal capacity or be gravely disabled in at least three separate proceedings under either division 4 of the Probate Code or the LPS Act, including at least one contested matter or trial.

(b) Alternative qualifications

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

(1) At the time of appointment, the attorney works for an attorney, a private law firm, a public defender's office, or a legal services organization (including the organization designated by the Governor as the state protection and advocacy agency, as defined in section 4900(i) of the Welfare and Institutions Code) approved by the court for appointment to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity, and the attorney is supervised by or working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a); or

(2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d), and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

(c) Annual education

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

(d) Subject matter and delivery of education

Education in the following subjects—delivered in person or by any State Bar-approved method of distance learning—may be used to satisfy this rule's education requirements:

(1) State and federal statutes—including the federal Americans with Disabilities Act (42 U.S.C. §§ 12101–12213)—rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities;

(2) The attorney-client relationship and lawyer's ethical duties to a client under the California Rules of Professional Conduct and other applicable law; and

(3) Special considerations for representing an older adult or a person with a disability, including:

(A) Communicating with an older client or a client with a disability;

(B) Vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect;

(C) Effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living; and

(D) Less-restrictive alternatives to conservatorship, including supported decisionmaking.

Rule 7.1104. Local administration

(a) Procedures

(1) A local court may create and maintain lists or panels of certified attorneys or approve the public defender's office and one or more legal services organizations to provide qualified attorneys for appointment under Probate Code sections 1470 and 1471 to represent specific categories of persons in proceedings under division 4 of that code.

(2) A court may establish, by local rule adopted under rule 10.613, procedural requirements, including submission of an application, as conditions for approval for appointment or placement on a list or panel.

(b) Exception to qualifications

A court may appoint an attorney who is not qualified under rule 7.1102 or 7.1103 on an express finding, on the record or in writing, of circumstances that make such an appointment necessary. These circumstances may include, but are not limited to, when:

(1) No qualified attorney is available for appointment; or

(2) The needs or interests of the person to be represented cannot be served without the appointment of an attorney who has other specific knowledge, skills, or experience.

Rule 7.1105. Certification of attorney qualifications

(a) Initial certification

Before first availability for appointment under Probate Code section 1470 or 1471, an attorney must certify to the court that the attorney:

(1) Meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and

(2) Meets the qualifications in rule 7.1102 for appointment to represent wards or the qualifications in rule 7.1103 for appointment to represent conservatees, or both, depending on the appointments the attorney wishes to be available for.

(b) Annual certification

To remain eligible for appointment under Probate Code section 1470 or 1471, an attorney who has submitted an initial certification must certify to the court, no later than March 31 of each following year, that:

(1) The attorney meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and

(2) The attorney has completed the applicable annual education—in rule 7.1102, 7.1103, or both—required for the previous calendar year.

(c) Notification of disciplinary action

An appointed attorney must notify the court in writing within five court days of any disciplinary action taken against the attorney by the State Bar of California. The notification must describe the charges, disposition, and terms of any reproof, probation, or suspension.

(d) Documentation

A court to which an attorney has submitted a certification under this rule may require the attorney to submit documentation or other information in support of any statement in the certification.

(e) Confidentiality

The certifications required by this rule and any supporting documentation or information submitted to the court must be maintained confidentially by the court. They must not be filed or lodged in a case file.

ATTORNEY STATE BAR NUMBER:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY: STATE: ZIP CODE:

TELEPHONE NO.: FAX NO.:

EMAIL ADDRESS:

DO NOT FILE OR LODGE IN CASE FILE

DRAFT
Not approved by the Judicial Council

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

CERTIFICATION OF ATTORNEY QUALIFICATIONS

☐ **INITIAL** ☐ **ANNUAL**

INSTRUCTIONS

1. **INITIAL:** Before a court may appoint you as counsel for the first time under Probate Code section 1470 or 1471, you must complete items 1, 2, and 3; complete item 4 for appointment to represent a ward or proposed ward; complete item 5 for appointment to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity; provide any additional required information in item 7; sign the form at the bottom of page 2; and submit the form to the appointing court.
2. **ANNUAL:** To remain eligible for appointment, before March 31 of each calendar year following initial certification you must complete items 1, 2, 3, and 6; provide any additional required information, including an explanation of any unsatisfied requirements, in item 7; sign the form at the bottom of page 2; and submit the form to the appointing court.

I certify that *(check all boxes that apply):*

LICENSING AND DISCIPLINE

1. a. ☐ I am an active member in good standing of the State Bar of California. *(Date of admission):*

   OR

   b. ☐ I am a registered legal aid attorney qualified to practice law in California under rule 9.45 of the California Rules of Court. *(Date of special admission):*

2. ☐ I have had no professional discipline imposed in the 12 months immediately preceding the execution of this form.

INSURANCE

3. a. ☐ I am covered by professional liability insurance with limits no lower than $100,000 per claim and $300,000 per year or any higher limits required by local rule, if applicable.
   My insurer is *(specify name, address, phone number, and email address):*

   OR

   b. ☐ I am covered against professional liability at a level not lower than that in a. by a self-insurance program through my firm, employer, or government agency. *(Describe self-insurance in item 7.)*

INITIAL QUALIFICATIONS

Guardianship

4. ☐ I am qualified for appointment under Probate Code section 1470 to represent a ward or proposed ward because I have met at least one of the requirements in rule 7.1102(a) or (b) and, if applicable, all additional requirements imposed by local rule. *(Describe qualifying experience, work arrangements, or education in item 7.)*

Conservatorship and Capacity Determination

5. ☐ I am qualified for appointment under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity because I have met at least one of the requirements in rule 7.1103(a) or (b) and, if applicable, all additional requirements imposed by local rule. *(Describe qualifying experience, work arrangements, or education in item 7.)*

ANNUAL EDUCATION

6. ☐ I have completed the annual education requirements in ☐ rule 7.1102(c) ☐ rule 7.1103(c) and ☐ all additional education or training requirements imposed by local rule of court for the previous calendar year.
   (List the hours and applicable subjects of completed education in item 7.)

Additional space provided and signature required on page 2.

Form Approved for Optional Use
Judicial Council of California
GC-010 [Rev. January 1, 2020]

Probate Code, §§ 1456, 1470, 1471;
Cal. Rules of Court, rules 7.1101–7.1105
www.courts.ca.gov

CERTIFICATION OF *(name):* , ATTORNEY	CASE NUMBER:

7. ☐ Provide any additional required information, including an explanation of any unsatisfied requirements, below.

☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the statements in this form, including statements in all documents attached to or submitted with this form, are true and correct.

Date:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY) (SIGNATURE)

CONFIDENTIAL—FOR COURT USE ONLY

GC-011

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

(Do not file or lodge in case file)

CERTIFYING ATTORNEY *(Name):* State Bar No.:

ANNUAL CERTIFICATION OF COURT-APPOINTED ATTORNEY

NOTICE TO ATTORNEYS APPOINTED BY THE COURT IN PROBATE CONSERVATORSHIPS OR GUARDIANSHIPS

1. Beginning in 2008, you must complete three hours of continuing education each calendar year that qualifies for Minimum Continuing Legal Education (MCLE) credit for California State Bar–certified specialists in estate planning, trust, and probate law. (See Cal. Rules of Court, rule 7.1101(f).)
2. Beginning in 2009, you must certify to the court before the end of March of each year that (1) you completed the required continuing education during the previous calendar year, and (2) your State Bar disciplinary history and professional liability insurance or self-insurance coverage either have or have not changed since your qualification certification or last annual certification was filed. You must also describe any changes in your disciplinary history and insurance or self-insurance coverage. (See rule 7.1101(h)(4) and (5).)

I certify as follows *(check all boxes that apply):*

1. a. ☐ I have had no State Bar discipline imposed since the date of my qualification certification or my last annual certification.
   b. ☐ I have had State Bar discipline imposed since the date of my qualification certification or my last annual certification. The circumstances are described in Attachment 1b.
2. a. ☐ My professional liability insurance coverage (rule 7.1101(b)(3)), adequacy of self-insurance (rule 7.1101(e)(2)), or self-insurance program coverage (rule 7.1101(c)(2)) has not changed since the date of my qualification certification or my last annual certification.
   b. ☐ My professional liability insurance, adequacy of self-insurance, or self-insurance program coverage has changed since the date of my qualification certification or my last continuing education certification. My current circumstances are described in Attachment 2b.
3. My contact information is ☐ as stated in my qualification certification or last annual certification. ☐ as follows:
   a. Firm or employer name:
   b. Address:
   c. Telephone number: d. Fax number:
   e. E-mail address:
4. During calendar year _____, I completed a total of *(specify):* _____ hours of continuing education that qualifies for MCLE credit for State Bar-certified specialists in estate planning, trust, and probate law, as follows:

Provider	Subject	Hours
		_____
		_____
		_____

Total hours: _____

I certify that the foregoing is true and correct.

Dated:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY) (SIGNATURE)

Form Adopted for Mandatory Use
Judicial Council of California
GC-011 [New January 1, 2009]

ANNUAL CERTIFICATION OF COURT-APPOINTED ATTORNEY
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1456, 1470, 1471;
Cal. Rules of Court, rule 7.1101
www.courtinfo.ca.gov

W19-08

Probate Guardianship and Conservatorship: Qualifications and Education of Appointed Counsel (adopt Cal. Rules of Court, rules 7.1101–7.1105; repeal rule 7.1101; revise form GC-010; and revoke form GC-011)

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

	Commenter	Position	Comment	Committee Response
1.	California Judges Association Probate Committee by Erinn Ryberg, Legislative Director	N	The Committee members are very concerned about changing the current qualification rules in a way that make it more difficult to attract attorneys to serve on the panel of Court Appointed Attorneys (CAAs). The committee members noted that CAAs generally are compensated by their respective counties at a fraction of their usual hourly rate. In some counties, they have to make long drives to meet with their clients. They are obliged to take mandatory training, which can be expensive. Even under the existing requirements, it is a continuing struggle to have sufficient numbers of attorneys on the panels.	The committee appreciates CJA's comments. The committee appears to agree with CJA on the significant policy issues raised in the comments. The committee does not intend to make it more difficult overall to qualify for appointment under sections 1470 and 1471. The committee's goal in the proposed rules is to tailor the requirements better to comply with the mandates in section 1456 to establish qualifications and annual education related to conservatorships and guardianships, to modify the rule to focus on the qualifications and education most needed by attorneys appointed under sections 1470 and 1471, and to present the requirements more clearly than in the existing rule.
			The Committee was also concerned about attracting and retaining foreign-language attorneys to serve as CAAs.	The committee supports efforts to attract attorneys who speak languages other than English to increase access to the courts for persons with limited English proficiency. Though addressing this issue is largely beyond the scope of this proposal, the committee has modified its recommendation to authorize a court to appoint an attorney who is not certified or on its list or panel if necessary to serve the client's special needs and interests, which may include language access.
			The Committee agrees that training of CAAs is desirable, but the proposal does not improve on the present situation, in which training is conducted by the counties ad hoc. Some counties have bar groups individually lack the resources to put on an annual training program	The committee believes that, under section 1456(a)(3), training is not only desirable, but required. The committee shares CJA's concern that ad hoc training on a county-by-county basis is insufficient to ensure a consistently high level of representation across the state. To address this

	Commenter	Position	Comment	Committee Response
			that present the training as a service to the court. The courts individually lack the resources to put on an annual training program. Generally, the Committee is in favor of doing whatever it can do to make taking on these cases more attractive to the many qualified lawyers who might be willing to take on these cases, especially given the low level of compensation.	issue, the committee has proposed amendments to clarify that attorneys may apply education delivered by any State Bar–approved distance learning method to satisfy the chapter's education requirements. To increase the statewide availability of education that allows attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow their completion before January 1, 2021.
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	The JRS notes that some courts have struggled with the adequacy of representation for limited conservatees, particularly when private counsel in appointed. The amount of training/experience of some appointed counsel has been insufficient, thereby impacting the limited conservatees. Several opinions have been published in the various legal newspapers that are critical of how conservatorships are handled throughout the state. The Probate and Mental Health Advisory Committee (PMHAC) spent extensive time examining the current rules to develop the proposed changes contained herein that would address the necessary training/experience for appointed counsel.	The committee appreciates the JRS's comments. The committee intends the amendments to these rules to improve the quality of representation by attorneys appointed under sections 1470 and 1471. Although the recommendation increases the amount of annual education required somewhat, it is intended more to ensure that appointed attorneys have experience and education relevant to the knowledge and skills attorneys they need to provide effective representation for minors, conservatees, and persons alleged to lack legal capacity.
3.	William Lenehan Deputy Public Defender Office of the Ventura County Public Defender	AM	First I want to commend the committee on its efforts to fix the requirements and the forms. [I]t is very difficult to find educational opportunities (CLE) that are probate conservatorship, LPS conservatorship and/or guardianship specific. Therefore, narrowing the qualifying educational and/or practice requirements may be overly burdensome.	The committee appreciates Mr. Lenehan's comments. To increase the statewide availability of education that allow attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow their completion before January 1, 2021.

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

	Commenter	Position	Comment	Committee Response
			Further, I think the committee should take into account the uniqueness that the public defenders offices present. Specifically: 1) that they perform much of this type of work in our state; 2) that they rotate their attorneys; and 3) that they typically have numerous attorneys to supervise and answer questions of less experienced attorneys. As such, I would suggest treating them differently. Specifically, that the education and practice requirements be waived (or reduced) as long as the attorney is on a team with or being supervised by a fully qualifying attorney.	The committee recognizes and appreciates the conservatorship defense work performed by public defenders across California. Rule 7.1103(b)(1) and its counterpart for guardianships, rule 7.1102(b)(1), seek to account for frequent rotation of attorneys by allowing an attorney to qualify for appointment if the attorney works for a public defender's office or a legal services organization approved by the court and is supervised by *or* works in close consultation with an attorney who has met the experience-based qualifications.
4.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	A	OCBA is concerned that the proposed qualifications and education requirements will discourage individuals from serving as court appointed counsel, especially given the low hourly rates paid. The Courts need these individuals to serve and there are serious concerns the pool of counsel available for appointment will diminish significantly if these qualifications and education requirements are implemented. ***1. Does the proposal appropriately address the stated purpose?*** Yes ***2. Should proposed rules 7.1102(b)(1)(B) and 7.1103(b)(1)(B) specify minimum amounts of professional liability insurance coverage?*** Yes ***3. Should proposed rules 7.1102(b)(1)(A) and 7.1103(b)(1)(A) be expanded to authorize appointment of legal-services attorneys registered under rule 9.45?*** Yes	The committee recognizes the bar association's concern, and does not intend to discourage individual attorneys from making themselves available for appointment under Probate Code sections 1470 and 1471. The recommended qualifications and annual education requirements reflect the committee's determination of the minimum needed to ensure adequate representation by appointed counsel. No response required. The committee agrees with the comment and has amended the rules to specify minimum coverage limits. The committee agrees and has amended rule 7.1101(c) to authorize appointment of a registered legal-aid attorney qualified to practice law in California under rule 9.45 who meets the other requirements in the rules.

	Commenter	Position	Comment	Committee Response
			4. Should the exemption for small courts be expanded to include courts with more than four authorized judgeships? If so, what would be the appropriate upper limit? The County of Orange is not a small court and thus we have no comment.	No response required.
5.	Probate Attorneys of San Diego (PASD) by Hilary Vrem, President	AM	It is our opinion that should the proposed rules be enacted as currently written, San Diego will face the challenge of attracting new CAAs but may lose current CAAs who will no longer qualify to serve. **Rule 7.1101(a) and Rule 7.1101(b)(1)** reference to *division 4* of the Probate Code. Division 4 of the Probate Code is too limited because it excludes court appointments made when helpful in proceedings under division 4.5 (power of attorney), division 4.7 (health care decisions), division 7 (estates) or division 9 (trusts) of the Probate Code ***Suggested Language:*** *"…or person alleged to lack legal capacity in a proceeding under ~~division 4~~ of the Probate Code."* **Rule 7.1101(b)(2)** states "counsel of record" means an attorney who assumed personal responsibility for the performance of legal services for a client in a judicial proceeding under California law, regardless of whether:. . ." This definition applies to all judicial proceedings conducted in California, whether adjudicated under California law or some other jurisdiction's laws.	The committee does not intend the amended rules to discourage individual attorneys from making themselves available for appointment under Probate Code sections 1470 and 1471 and has modified its recommendation to mitigate the burden on attorneys while maintaining requirements sufficient to promote effective representation by appointed counsel. The committee does not recommend the suggested change. The rules in this proposal respond to the mandate in Probate Code section 1456(a), which directs the Judicial Council to adopt rules that specify the qualifications and annual education requirements for attorneys appointed under sections 1470 and 1471 of that code. Sections 1470 and 1471, in turn, authorize or mandate appointment of counsel only in proceedings under division 4 of the code. Appointments authorized by other statutory provisions or in proceedings outside division 4 are beyond the scope of this proposal. The committee has removed the term "counsel of record" and its definition from the proposed rules. No further response is necessary.

	Commenter	Position	Comment	Committee Response
			Suggested Language: *"...performance of legal services for a client in a judicial proceeding under in California laws, regardless of whether:"* **Rule 7.1101(b)(3)** Definition is too specific and potentially eliminates appointments related to guardianships for proceedings others other than the four listed. ***Suggested Language:*** *"Probate guardianship" means any proceeding related to ~~the establishment, supervision, modification, or termination of~~ a general or temporary guardianship under division 4 of the Probate Code, including but not limited to the establishment, supervision, modification, or termination of a guardianship.* **Rule 7.1101(b)(4)** Definition is too specific and potentially eliminates appointments related to conservatorships for proceedings others other than the four listed. ***Suggested Language:*** *"Probate conservatorship" means any proceeding related to ~~the establishment, supervision, modification, or termination of~~ a general or temporary conservatorship under division 4 of the Probate Code, including but not limited to the establishment, supervision, modification, or termination of a conservatorship.* **Rule 7.1101(b)(9)** The definition of trial should include the determination of disputed issues of fact or law.	The committee agrees that the limiting language is not needed and has amended the definition in rule 7.1101(b)(3) to remove it. The committee agrees that the limiting language is not needed and has amended the definition in rule 7.1101(b)(4) to remove it. The committee does not recommend the suggested change. The committee does not intend the term

	Commenter	Position	Comment	Committee Response
			Suggested Language: "Trial" means the determination of one or more disputed issues of fact or law by means of an evidentiary hearing.	"trial," as used in these rules, to encompass resolution of issues of law.
			Rule 7.1102(b)(2) states that an attorney's failure to meet the requirements in the new rule 7.1105 is good cause to terminate the attorney's existing appointments and remove the attorney from the panel.	The committee has modified its recommendation to remove the language stating that an attorney's failure to meet the requirements in the rules is good cause to terminate the attorney's appointment and remove the attorney from the panel. The committee nevertheless believes that statement to be accurate as a matter of law.
			PASD believes there should be a grandfather clause to allow attorneys already on the panel prior to the effective date of this new rule to remain on the approved attorney panel. There are currently-qualified attorneys on the panel who may not have the requisite education or experience to re-qualify now. For example, many experienced attorneys may no longer handle trials and they wouldn't be eligible to re-qualify to be on the panel under these new rules. The Court can ill afford to lose the expertise of these attorneys who are already assisting the Court on a regular basis.	The committee has modified its recommendation to add rule 7.1101(e), which makes clear that the amended rules are not retroactive, and that an attorney who has submitted an initial certification of qualifications under the existing rule need not submit a new initial certification under the amended rules to maintain eligibility for appointment. Those attorneys will continue to be eligible for appointment if they continue to meet licensing, disciplinary status, and insurance requirements, complete the annual education requirements, and submit the annual certification under rule 7.1105(b).
			In particular, this rule would adversely affect probate courts with more than four authorized probate judges, as those courts cannot use Rule 7.1104 to make an exception to keep these experienced attorneys on the panel.	Although no exception is needed to keep experienced attorneys on the panel, the committee has modified its recommendation to authorize a court of any size to appoint an attorney who has not met the qualifications in rule 7.1102 or 7.1103 on an express finding of necessity.
			Rule 7.1102(c)(1) states: Within the five years immediately before first accepting appointment after January 1, 2021, the attorney must have represented a petitioner or an objector at the beginning of at least three	The committee agrees and has modified its recommendation to delete the suggested language.

	Commenter	Position	Comment	Committee Response
			probate guardianship proceedings, including at least one contested matter or trial, from initial contact with the client through the conclusion of the hearing on the petition. Delete the language "at the beginning of". This language is ambiguous. Does it mean the attorney must represent an objector when the petition is initially filed? ***Suggested Language:*** Within the five years immediately before first accepting appointment after January 1, 2021, the attorney must have represented a petitioner or an objector ~~at the beginning of~~ in at least three probate guardianship proceedings, including at least one contested matter or trial~~, from initial contact with the client through the conclusion of the hearing on the petition.~~ **Rule 7.1102(c)(2)** requires an attorney to represent a minor before qualifying to be on the attorney panel. This requirement is virtually impossible to meet as the Court only appoints panel attorneys to represent minors, and an attorney can't get on the panel unless the attorney has previously been on the panel and appointed by the Court. ***Suggested Language:*** *Delete Rule 7.1102 (c)(2).*	The committee does not recommend deleting this qualification. Allowing an attorney to qualify to for appointment to represent minors in guardianship proceedings *only* by representing minors on appointment in guardianship proceedings would indeed appear calculated to reduce the size of the pool of eligible attorneys. Yet that is not what the rule requires. An attorney may also meet the child representation experience requirement by representing minors in child welfare or child custody proceedings. And, as the commenter recognizes above, an attorney may also qualify for appointment by representing petitioners or objectors. Finally, an attorney may qualify for appointment simply by virtue of having sufficient experience to qualify under the rules for appointment in child welfare or child custody proceedings.

	Commenter	Position	Comment	Committee Response
			Rule 7.1102(d) By requiring attorneys to meet both (d)(1) and (d)(2) to qualify to be a CAA, Rule 7.1102(d)(1) unnecessarily discriminates against solo practitioners who don't "work for an attorney or for a law firm". This Rule would make more sense if the attorney was only required to meet either (d)(1) or (d)(2).	The committee has modified its recommendation to combine these two alternative qualifications into a single qualification that applies to an attorney who works for a firm or legal services organization. It has also added a separate alternative qualification to allow a sole practitioner or an attorney working for a small firm to qualify for appointment by completing applicable education and working in close consultation with an attorney who has met the experience-based qualifications.
			Furthermore, "supervision" of an attorney raises serious issues as to (a) the supervising attorney's liability for the acts of the supervised attorney;	The committee understands this comment to implicate the requirements of rule 5.1 of the Rules of Professional Conduct, which places a duty on an attorney with direct supervisorial authority over another attorney to take reasonable remedial action to avoid or mitigate the consequences of the other attorney's know ethical violations. In response to this concern, the committee has revised the rule to require *either* close professional consultation *or* supervision of the inexperienced attorney. This change is intended to clarify that the rule does not *require* the experienced attorney to have any supervisory authority over the inexperienced attorney. For more detail, please see the response to TEXCOM's comment below, at pages 46–47.
			(b) issues regarding the attorney-client privilege and the supervised attorney's duty of client confidentiality; and	Regarding the attorney-client privilege, the committee believes that Evidence Code section 912(d) adequately addresses the professional consultation contemplated by the proposed rules by authorizing confidential disclosure of client communications when "reasonably necessary for the accomplishment of the purpose for which the lawyer … was consulted" without that disclosure waiving the privilege.

	Commenter	Position	Comment	Committee Response
			(c) payment of the supervising attorney for work performed. Most of the CAAs are paid by the county so is the County not going to have to pay two attorneys to do this work? ***Suggested Language:*** *(1) Works for an attorney…;* ~~*and*~~ *or* *(2) Is* ~~*supervised*~~ *mentored by an attorney who has personally qualified to be a court appointed attorney* ~~*satisfied the requirements in (c)*~~*.*	Payment of appointed attorneys is provided for by statute and is beyond the scope of this proposal. However, the committee is not aware of any statutory authority for payment of a consulting attorney who is not appointed by the court. Any payment for consultation would appear to be a matter subject to agreement between the attorneys.
			Rule 7.1103(a) refers to division 4 of the Probate Code. Division 4 of the Probate Code is too limited because it excludes court appointments made when helpful in proceedings under division 4.5 (power of attorney), division 4.7 (health care decisions), division 7 (estates) or division 9 (trusts) of the Probate Code ***Suggested Language:*** *"…in a conservatorship, limited conservatorship or other proceeding under* ~~*division 4 of*~~ *the Probate Code."*	The committee does not recommend the suggested change. The rules in this proposal respond to the mandate in Probate Code section 1456(a), which directs the Judicial Council to adopt rules that specify the qualifications and annual education requirements for attorneys appointed under sections 1470 and 1471 of that code. Sections 1470 and 1471, in turn, authorize or mandate appointment of counsel only in proceedings under division 4 of the code. Appointments authorized by other statutory provisions or in proceedings outside division 4 are beyond the scope of this proposal.
			Rule 7.1103(c) should include limited conservatorships and **Rule 7.1103(d)** should be deleted so there isn't a difference in qualification requirements between a general or a limited conservatorship.	The committee agrees with this suggestion and has modified its recommendation accordingly.
			There is the greatest need for attorneys to assist with Limited Conservatorships but it is not likely that an attorney would represent a proposed conservatee, unless the attorney was appointed by the Court.	The committee has amended the definition of "probate conservatorship" in rule 7.1101(b)(3) to expressly include a general or temporary limited conservatorship within its scope.

	Commenter	Position	Comment	Committee Response
			Suggested Language: *"Except as provided in (d), . . .as counsel of record for a limited conservatee, proposed limited conservatee, conservatee, proposed conservatee, or a person alleged to lack. . ."*	
			Rule 7.1103(c)(2) requires the requirements of both (A) and (B) to be met. PASD suggests that only (A) **or** (B) should be required. ***Suggested Language:*** *Within the five years immediately before . . .the attorney must have completed either (A) ~~and~~ or (B) as follows:*	The committee does not recommend the suggested change. However, it has revised rule 7.1103(b) to provide two separate alternative methods of qualifying for appointment. One requires that the attorney work for an attorney, law firm, public defender's office, or legal services organization. The other requires that the attorney have completed three hours of applicable professional education. Both of these methods require working in close consultation with an attorney who has met the experience-based qualifications.
			Rule 7.1103(c)(2)(A) The experience requirements for guardianship and conservatorship appointments should be consistent. There should be no difference between general and limited conservatorships. ***Suggested Language:*** *Represented a petitioner, ~~or~~ an objector to the petition, conservatee, proposed conservatee, limited conservatee, proposed limited conservatee, or person alleged to lack legal capacity in ~~at the beginning of~~ at least three ~~two~~ probate conservatorship proceedings, including at least one contested matter or trial~~, from initial contact with the client through the conclusion of the hearing on the petition.~~*	The committee agrees generally with the suggestion and has incorporated limited conservatorships into the definition of "probate conservatorship" in rule 7.1101(b) so that all references to the latter term include the former. The committee notes, however, that representation of proposed limited conservatees with alleged developmental disabilities requires knowledge of a different, overlapping legal framework and is also likely to raise distinct issues of fact, including which less-restrictive alternatives need to be considered. The committee intends the required annual education to address the crucial differences between general and limited conservatorships.
			Rule 7.1103(c)(2)(B) The Rule should be revised to refer to only LPS conservatorships and should be consistent with conservatorship requirements.	The committee does not recommend limiting this category to experience representing a person in a proceeding under the LPS Act. The committee has

	Commenter	Position	Comment	Committee Response
			Suggested Language: Represented a conservatee, proposed conservatee, or person alleged to lack legal capacity in at least <u>three</u> ~~two~~ separate matters, including at least one contested matter or trial~~, under division 4 of the Probate Code or~~ under the LPS Act.	combined the experience-based qualifications into subdivision (a), allowing an attorney the greatest flexibility to combine different types of experience to acquire the necessary qualifications while ensuring that the experience is applicable to the representation to be undertaken on appointment.
			Rule 7.1103(c)(3) This requirement is virtually impossible to meet as the Court only appoints panel attorneys to represent conservatees, and an attorney can't get on the panel unless the attorney had previously been on the panel and appointed by the Court. ***Suggested Language:*** *Delete this paragraph.*	The committee agrees that a rule that permitted an attorney to qualify for appointment *only* by using experience serving as an appointed attorney would create a "catch-22" situation. But neither the rule that was circulated for comment nor the proposed rule is so limited. First, both the statutes and the rules contemplate that an attorney could acquire qualifying experience when retained to represent a proposed conservatee. Second, the proposed rule authorizes an attorney to qualify with experience representing petitioners and objectors as well as conservatees or proposed conservatees. Third, the rule authorizes an attorney to qualify using alternatives to experience. The committee does not, therefore, recommend the suggested change.
			Rule 7.1103(d) By requiring attorneys to meet both (d)(1) and (d)(2) to qualify to be a CAA, Rule 7.1103(d)(1) unnecessarily discriminates against solo practitioners who don't "work for an attorney or for a law firm". This Rule would make more sense if the attorney was only required to meet either (d)(1) or (d)(2).	The committee agrees that the rule should provide an avenue for sole practitioners to be appointed under sections 1470 and 1471. The committee has addressed this issue by adding a provision to subdivision (b) to allow sole practitioners to qualify for appointment by completing three hours of applicable professional education and working in consultation with an attorney who meets the experience requirements in the rule.
			Furthermore, "supervision" of an attorney raises serious issues as to (a) the supervising attorney's liability for the acts of the supervised attorney; (b) issues regarding the attorney-client	Please see the response to the comment on rule 7.1102(d), above, and the response to TEXCOM's comment below, at pages 46–47.

	Commenter	Position	Comment	Committee Response
			privilege and the supervised attorney's duty of client confidentiality; and (3) payment of the supervising attorney for work performed. ***Suggested Language:*** *(3) Works for an attorney…; ~~and~~ or* *(4) Is supervised mentored by an attorney who has personally qualified to be a court appointed attorney ~~satisfied the requirements in (c).~~*	
			Rule 7.1103(e) This rule should include limited conservatees. ***Suggested Language:*** *"To accept initial appointment under Probate Code section 1470 and 1471 to represent a conservatee, proposed conservatee, limited conservatee, proposed limited conservatee, or person alleged to lack capacity . . ."*	The committee intends the rule to apply to representation of limited conservatees, but does not recommend the suggested change. The language in the rule tracks the general language in sections 1456, 1470, and 1471, which applies to limited conservatees. In addition, rule 7.1101(b)(3) defines a probate conservatorship to include a limited conservatorship.
			Rule 7.1104(a) This Rule discriminates against large courts (courts with more than four authorized probate judges) by only allowing small courts to waive the appointment requirements. PASD is unclear whether a "small court" is comprised of four judicial officers or four probate judges. This should be clarified so the courts are clear when they can invoke a waiver. ***Suggested Language:*** *A probate court ~~with four or fewer authorized judges~~ may waive any of the requirements. . .*	The committee agrees that the exception to the requirement to appoint only qualified attorneys should be expanded to apply to all courts, no matter their size. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of these rules. The current rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in those courts and is therefore somewhat arbitrary. Reported data for filings appear to vary in completeness from court to court, so an exemption based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise in any court in which it may be necessary to appoint an attorney who is not certified under these rules but

	Commenter	Position	Comment	Committee Response
				who has other special qualifications to meet the needs or interests of a specific client. The committee has therefore modified its recommendation to authorize a court to appoint a an attorney who has not met the qualifications and annual education requirements in rule 7.1102 or 7.1103 on an express finding of necessity, which may include the lack of available qualified counsel or the need for special skills to serve a client's interests.
			Rule 7.1104(b) This Rule is too onerous on the Probate Courts and requires a court to make express written findings when exercising a Rule 7.1104(a) waiver. It may also improperly invade a court's thought process or require the disclosure of confidential information.	The committee does not recommend the suggested change. The probate courts have been required to make express written findings since 2008, when rule 7.1101 took effect. Nevertheless, to reduce the burden on the court without diminishing the importance of the findings, the committee has replaced the requirement of written findings with a requirement to make express findings either in writing or orally on the record.
			Rule 7.1105(a) This Rule is internally inconsistent and ambiguous as written. An attorney appointed using a rule 7.1104 waiver may not be able to certify that he or she meets all the requirements in rules 7.1102(b)–(c) or 7.1103(b)–(c). Paragraph 6 of the form GC-010 adequately provides appropriate language for attorney certification, including an attorney appointed under a 7.1104 waiver. ***Suggested Language:*** *Unless appointed under rule 7.1104, before accepting an appointment under Probate Code section 1470 or 1471 after January 1, 2021, an attorney must certify on form GC-010 that the attorney meets the requirements to be appointed by the court.* ~~*in rule 7.1102(b) or 7.1103(b) and, unless appointed under rule 7.1104, all applicable*~~	The committee agrees that the rule was misleading and has modified its recommendation to require all attorneys who wish to be available for appointment to certify each year that they meet the licensing, disciplinary history, and professional liability coverage requirements in rule 7.1101(c)(1)–(3). An attorney appointed under the exception authorized by rule 7.1104(b) may certify ad hoc that they meet the licensing, disciplinary history, and liability coverage requirements.

	Commenter	Position	Comment	Committee Response
			~~*requirements in rule 7.1102(c)(e), rule 7.1103 (c) (e), or both.*~~	
6.	Spectrum Institute by Thomas F. Coleman Palm Springs	A	Attorneys appointed to represent seniors and people with disabilities in probate conservatorship proceedings have special challenges because their clients have special needs. In some places in California, such as Sacramento, the superior court does not even appoint an attorney to represent a significant number of conservatees or proposed conservatees. Some of these litigants must represent themselves. Obviously, improved training of attorneys will not help these involuntary litigants because they do not have an attorney. In other places, like Los Angeles, the court appoints private counsel. The court operates a PVP legal services program. It farms out the training to the local bar association. We have monitored these trainings and have found them sorely lacking. Hopefully, when these new rules go into effect, the training program will improve. But there is no guarantee unless the State Bar requires pre-clearance of the content before it approves MCLE credits for these trainings. The local bar cannot be counted on to conduct good trainings without monitoring from the State Bar or some other outside entity. In places where the public defender is appointed, such as Alameda County, the PD's office does not have a training program or performance standards. So this is another problem that needs to be addressed.	The committee appreciates Spectrum Institute's comments. The specific issues raised by the comments are beyond the scope of this proposal. No further response is required.

	Commenter	Position	Comment	Committee Response
			To our knowledge, no court-appointed attorney program in California has performance standards or monitoring of the quality of services. This is yet another problem that needs to be dealt with. Having said all of this, it is time to move forward with these proposals. They are an improvement over what exists now. The time for study has ended. It is time to implement the new rules and take this to the next level. Courts and court-appointed attorneys—whether public defenders or private counsel—have obligations under the Americans with Disabilities Act to ensure that seniors and people with disabilities have effective communication and meaningful participation in probate conservatorship proceedings. This should not be left to chance. Adopting these new mandatory educational requirements is a step forward, but still falls short of ensuring compliance with the ADA. Hopefully, the Judicial Council will adopt [these rules] soon. Then the real work begins for the bench and bar to make sure the spirit of these proposals gets translated into effective legal services for clients in conservatorship proceedings.	
7.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	We believe the requirements for representing conservatees are too onerous and should be revised in a way similar to what has been provided for counsel for wards. For wards, counsel can qualify by experience in three cases representing either the minor child or "a petitioner or an objector." One of the cases must be a contested matter or trial.	The committee agrees generally with the comment and has modified its recommendation to allow counsel to qualify for appointment to represent the interests of conservatees et al. by representing three petitioners, objectors, or persons alleged to be gravely disabled as well as conservatees, proposed conservatees, or persons alleged to lack legal capacity.

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

	Commenter	Position	Comment	Committee Response
			For conservatorship, counsel can qualify by either (1) three cases representing conservatees with at least one contested matter or trial, or (2) a combination of two cases representing conservatees and two cases representing petitioners / objectors with at least one of each being a contested matter or trial. It is our recommendation that we mirror the requirements for wards in the requirements for conservatees. For either wards or conservatees, it is nearly impossible to represent them without being court-appointed. Thus, requiring someone to have previously represented conservatees in order to be qualified to represent conservatees does not provide a path for new attorneys to become qualified. There is a new "alternative experience requirement" for both wards or conservatees that allows someone who works for "an attorney, a private law firm, a qualifying legal services provider, or a government agency" that does meet the experience requirements and is supervised by an attorney who qualifies to qualify. This is helpful. But, we do not believe that working for someone who qualifies should be the only means of becoming qualified to represent conservatees. There should be a path to qualify by representing petitioners or objectors alone, like there is for wards. This would allow solo practitioners a reasonable path to qualify. We believe that experience representing petitioners or objectors is at least as valuable, if not more valuable, than working under the supervision an attorney who qualifies under the rule.	

	Commenter	Position	Comment	Committee Response
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? ***Yes.***	The Committee appreciates the court's comments. Responses to specific comments are provided below.
			Q: Should the exemption for small courts be expanded to include courts with more than four authorized judgeships? If so, what would be the appropriate upper limit? ***Given the Legislature's desire to expand language access, consideration should be made to include an additional waiver section for attorneys who may not meet the minimum qualifications but who speak another language.***	The committee agrees that access to judicial proceedings for persons with limited English proficiency is critically important. The committee has modified its recommendation to expand the exception in rule 7.1104(b) to authorize the court to appoint an attorney who does not meet the qualifications in rule 7.1102 or 7.1103 if it finds that appointment of that attorney is necessary to serve the client's special needs or interests. The committee intends this exception to encompass the language-access needs of a client with limited English proficiency
			Q: Would the proposal provide cost savings? If so, please quantify. ***No.***	No further response required.
			Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? ***Currently, a Court Operations Clerk tracks the submission of these forms. Training them to look for the new forms would be minimal. Our court may have to revise its local form coversheet to reflect some of the changes.***	No further response required.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***Yes.***	No further response required.

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

	Commenter	Position	Comment	Committee Response
			Q: How well would this proposal work in courts of different sizes? ***It may be difficult for attorneys to meet these qualifications in smaller counties.***	The committee intends the alternative qualifications in rules 7.1102(b) and 7.1103(b), the exceptions authorized under rule 7.1104(b), and its efforts with Judicial Council staff to provide applicable education via distance learning to address the difficulties faced by attorneys, including those practicing in smaller counties, to meet the experience-based qualifications and annual education requirements.
			GC-010: The current version of the form has the following statement at 3.e. and #4.d., "I will, if requested, provide the case names and numbers, courts and parties I represent in the court proceedings identified above and, if item 3c(2)(E) is checked, redacted copies of the estate planning documents prepared." This should be included in the revised version of the form. Items #3.a, 4.a, and 5.a: for the second checkbox listed in each section, there should be a line provided for the applicant to list the name of the attorney, law firm, qualifying legal services provider, or government agency who has been approved by the Presiding or Supervising Judge.	The committee does not recommend the suggested changes. The committee instead proposes streamlining form GC-010 and revoking form GC-011 to simplify the certification process and make it compatible with variations in local processes. Rule 7.1105(d) authorizes a court to require the attorney to submit documentation in support of any statement made on the certification. Rule 7.1101(c)(5) & (d) and rule 7.1104(a) authorize a court to impose additional requirements, including substantive qualifications and procedural requirements, as conditions for appointment or placement on a list or panel. Item 7 on form GC-010 is intended to provide space for a certifying attorney to supply any additional information required by the form or local rule.
9.	Trusts and Estates Section Executive Committee (TEXCOM) California Lawyers Association by Melissa R. Karlsten, Member, and Saul Bercovitch, Director of Governmental Affairs	NI	TEXCOM greatly appreciates PMHAC's careful consideration of the comments TEXCOM submitted in response to the original proposal, and the numerous changes PMHAC made in response to those comments and comments submitted by others. TEXCOM also acknowledges, as the Invitation to Comment notes, that the "amendments to the experience and education requirements try to balance the need for attorneys to have specific knowledge and experience to provide adequate	The committee appreciates TEXCOM's comments. See below for responses to specific concerns.

	Commenter	Position	Comment	Committee Response
			representation with the need to encourage less experienced attorneys to enter the field." We recognize that striking the proper balance requires the consideration of numerous factors. Notwithstanding the changes made in the revised proposal, TEXCOM remains concerned that the proposed rules will discourage attorneys from applying for court appointed panels, significantly reducing the number of attorneys available to serve in this important role. We note that PMHAC has revised the proposed rules to reduce the annual education requirement to three hours by dividing the experience requirement into two separate rules, those for wards and proposed wards, and those for conservatees and proposed conservatees. While acknowledging the marked reduction in educational requirements, TEXCOM is concerned that by giving "attorneys the opportunity to focus on one type of representation without increasing the educational burden," it will still be overly restrictive since it may prevent a broader pool of attorneys that qualify for both, thus creating a larger number of attorneys that qualify to represent conservatees and proposed conservatees than wards and proposed wards, or vice versa. Perhaps the annual education requirement should be three hours where an attorney only applies for one category but four hours in the instances where an attorney wishes to qualify for both, two hours in each category.	The committee does not recommend reducing the annual education requirements any further. The specific knowledge required to represent a minor child in a guardianship proceeding is sufficiently distinct from the knowledge required to represent an adult client in a conservatorship proceeding to justify separate education requirements covering distinct subject matter. Three hours seem to be the minimum time required to cover each set of subjects in sufficient depth. The committee does not view six hours of education per year to be excessively burdensome for attorneys who want to be eligible for appointment to represent wards and conservatees. The committee recognizes that education meeting the subject matter requirements may be difficult to find. The committee has reduced the number of required subjects while keeping them focused on guardianships or conservatorships as required by statute, and has authorized delivery of qualifying education through any distance learning method approved by the State Bar. Finally, to increase the statewide availability of education that allow attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow completion before January 1, 2021.

	Commenter	Position	Comment	Committee Response
			TEXCOM also acknowledges PMHAC's revisions found in rule 7.1102(d) and rule 7.1103(d) such that the supervising attorney is not required to work at the same firm or organization as the attorney being supervised. However, given California's recently enacted rules of professional conduct, specifically rule 5.1, TEXCOM is concerned that attorneys not in the same firm will be hesitant to supervise or act as a mentor to new or inexperienced attorneys. While an ethical violation by a supervising attorney under rule 5.1 calls for ratification or knowledge coupled with a failure to remediate, we anticipate that the risk alone will likely deter experienced attorneys from acting as supervisors to attorneys outside their firm or organization.	The committee agrees that the requirement as circulated could have been interpreted to require the experienced attorney to have "direct supervisory authority" over the inexperienced attorney and, therefore, a duty to remedy a known ethical violation. The committee does not intend to require the experienced attorney to assume that duty as a condition of the inexperienced attorney's qualification for appointment under rule 7.1102(b) or 7.1103(b). To clarify this intent, the committee has revised the rules to allow an inexperienced attorney to meet the alternative qualifications in part by working in close professional consultation with *or* under the supervision of an experienced attorney. The committee intends "working in close professional consultation" to describe a professional relationship in which the inexperienced attorney receives the benefit of the experienced attorney's knowledge and skills and applies them to provide effective representation. Consulting attorneys may wish to make clear from the outset the scope and limits of their relationship to avoid unanticipated ethical issues.
			Finally, the Request for Specific Comments in the Invitation to Comment asks: "Should the exemption for small courts be expanded to include courts with more than four authorized judgeships? If so, what would be the appropriate upper limit?" TEXCOM believes the issue of the experience requirement could be resolved by expanding the scope of the exemption for small courts. In fact, TEXCOM suggests that the rules expand the court's discretion such that any court, without limitation, can waive any of the requirements in rule 7.1102(c)–(g) or 7.1103(c)–(g) if it cannot find qualified counsel, there is other hardship, or good cause is found.	The committee agrees that the exception to the requirement to appoint only qualified attorneys should be expanded to apply to all courts. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of these rules. The current rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in the court and is therefore somewhat arbitrary. Reported data for filings appear to vary in completeness from court to court, so an exemption based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise

	Commenter	Position	Comment	Committee Response
			The rules could also provide courts with the discretion to adjust but not completely waive certain requirements. As one example only, this would allow a court to create an internal supervision or mentoring program with the public defender's office or a local law school. Vesting discretion with the court familiar with the needs of its population would serve to minimize the impact of any unduly restrictive or prohibitive experience requirement.	in any court in which it may be necessary to appoint an attorney who is not certified under these rules but who has other special qualifications to meet the needs or interests of a specific client. The committee has therefore modified its recommendation to authorize a court of any size to appoint a noncertified attorney on an express finding of necessity, which may include the lack of available qualified counsel or the need to serve a client's special needs or interests.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
1.	California Advocates for Nursing Home Reform (CANHR) by Anthony Chicotel, Staff Attorney San Francisco	AM	**<u>The rule should promote zealous advocacy by court-appointed attorneys where it can.</u>** CANHR certainly understands the desire to ensure the competence of attorneys who a court-appointed to represent conservatees. However, if the goal of the Rule is to improve conservatorship defense, the Judicial Council would best be served by promoting zealous advocacy from the attorneys who represent conservatees. In CANHR's experience, attorneys who represent conservatees often serve their own notion of the conservatee's best interests, foregoing their client's wishes and fulfilling a role akin to a guardian ad litem's. While the committee unfortunately decided not to propose standards of representation for court-appointed counsel, zealous advocacy could still be a component of the education and experience requirements at the heart of the Rule. We believe this could be done in two ways: Add zealous advocacy to the subject matters listed in the Rule's subsection (g) that may be used to satisfy the MCLE requirements specified in subsection (f);	The committee appreciates CANHR's comment and agrees that clear specification of the role and duties of counsel retained or appointed to represent a (proposed) ward or conservatee is desirable. The committee does not, however, recommend that these rules serve that purpose, as it is beyond the scope of the proposal. Generally speaking, it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the role and duties of an attorney and to authorize any exceptions. When the Judicial Council *has* entered this arena, it has done so at the express direction of the Legislature and, in doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j) (duties of court-appointed minor's counsel).) Here, Probate Code section 1456 directs the council to specify the qualifications and the amount and subject matter of annual education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance with the statute. Nothing in sections 1456, 1470, and 1471, however, specifies, or invites the council to specify, the role and duties of counsel. The committee believes that the role and duties of an attorney to a client are best covered in the general legal ethics training required of all attorneys. Nevertheless, the committee has

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

	Commentator	Position	Comment	Committee Response
				modified its recommendation to add the attorney-client relationship and a lawyer's ethical duties to a client to the subjects included in rule 7.1103's annual education requirements.
			Add the representation of a conservatee in a conservatorship trial to the list of experience requirements in subsections (d) or (e). Representing a conservatee in a conservatorship trial is a good proxy for zealous advocacy and something that should be encouraged in state policy.	The committee agrees that experience representing a conservatee or proposed conservatee in at least one contested matter or trial is important and has clarified that requirement in rule 7.1103.
			Add other important subjects to the options for required education. In our experience, conservatees are often unnecessarily moved from their homes, drugged, and institutionalized. We would therefore like to see the subject matter listed in subsection (g) expanded to include 1) the long-term care continuum with an emphasis on less restrictive and community based options, and 2) non-pharmacological behavioral interventions.	The committee agrees that knowledge of less-restrictive options to conservatorship, including supported decisionmaking, is important and has added them to the subjects included in rule 7.1103's annual education requirements.
			Clarify that the education and experience requirements do not apply to retained counsel. The Rule applies to court-appointed counsel. Unfortunately, courts sometimes require attorneys who are retained by conservatees to complete Judicial Council form GC-010 in order to represent them. In such a case, the conservatee may be denied the right to choose	The committee agrees that the rules, as authorized by section 1456, apply only to counsel appointed by the court under section 1470 or 1471, and has modified its recommendation to clarify the scope of the rules.

	Commentator	Position	Comment	Committee Response
			their own counsel. We therefore recommend that subsection (b) include an express statement that the qualification, education, and certification requirements do not apply to attorneys who are retained or chosen by a conservatee or proposed conservatee.	
			Provide an experience exemption for attorneys with a demonstrated proficiency in conservatorship cases. Under the current and proposed rules, I would not qualify for court appointment to represent a proposed conservatee. I have represented approximately 25 conservatees, including two trials (though none in the last three years), authored the CANHR conservatorship defense guide, review and comment on proposed legislation regarding conservatorships (including sponsorship of SB 938 (Jackson, 2016)), and routinely handle calls from people all around the state with conservatorship questions.	The committee believes that the temporal proximity of an attorney's experience to the attorney's appointment is important, but it also recognizes that three years may be too short a time for an attorney to acquire the necessary experience. The committee has modified its recommended requirements to increase their flexibility by returning the time frame in which qualifying experience may be acquired to *five* years, tailoring the subject matter more narrowly to conservatorship proceedings, and requiring experience in only one contested proceeding or trial.
			The experience requirement looks as though it was written by probate attorneys for probate attorneys, creating a possible Catch-22. The only way one can get the experience "necessary" to represent conservatees is either to represent conservatees without the benefit of court appointment, represent conservators, or take other kinds of probate cases. Attorneys who are just interested in representing conservatees may find it impossible to do so.	The committee has revised the proposed alternative qualifications in rules 7.1102(b) and 7.1103(b) to authorize an attorney who has not personally met the experience requirements to accept appointments if supervised by or working in close consultation with an attorney who has met the experience requirements.

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

	Commentator	Position	Comment	Committee Response
			We therefore recommend the rule include some process by which attorneys can petition the court for an exemption from the experience requirement if they can demonstrate proficiency in conservatorship defense attained through other work.	The committee does not recommend authorizing an exemption based on "demonstration of proficiency" without more specificity. Instead, the committee has amended rules 7.1102(b) and 7.1103(b) to specify alternative qualifications for appointment that do not depend on the appointed attorney's personal experience. An attorney who works for a court-approved organization and is supervised by or working in close consultation with an experienced attorney may qualify for appointment. In addition, an attorney who has completed three hours of applicable education in the same subjects required for annual education and is working in close consultation with an experienced attorney may also qualify for appointment.
2.	Disability Rights California Legal Advocacy Unit by Melinda Bird, Sr. Litigation Counsel Los Angeles	AM	**1. Experience Requirement in Amended Rule 7.1101(e)** We support the alternative experience requirements in proposed Rule 7.1101(e), but recommend an additional provision to address the unique role of the state protection and advocacy agency. Welfare and Institutions Code § 4901(a) establishes a state protection and advocacy agency with particular responsibilities regarding persons with disabilities. In 1978, the Governor's office designated Disability Rights California as California's protection and advocacy agency pursuant to Section 4901.	The committee appreciates DRC's comment. Please see below for responses to specific concerns. The committee agrees with the suggestion and has added a specific reference to the state protection and advocacy agency to rule 7.1103(b).

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

	Commentator	Position	Comment	Committee Response
			Disability Rights California is the recipient of a special grant from the federal government to represent individuals with intellectual and developmental disabilities. Disability Rights California is also the recipient of a contract from the California Department of Developmental Services to our Office of Client's Rights Advocacy to represent consumers served by the State's 21 regional centers. For these reasons, attorneys with Disability Rights California have special expertise in representing people with intellectual and developmental disabilities, and would be well-suited for court appointments in conservatorship proceedings. However, as a state-wide organization, DRC generally and the Office of Client's Rights Advocacy in particular may be unable to meet the direct supervision requirements in proposed Rule 7.1101(e)(2). Consequently, we request that the Judicial Council consider the following underlined text as an additional amendment to proposed Rule 7.1101(e): **(e) Alternative experience requirements** An attorney who does not meet the experience requirements in (d) may be appointed under Probate Code section 1470 or 1471 if the attorney has completed the education required in (d) and:	The committee has revised the alternative qualifications in rule 7.1103(b) to increase the flexibility of the supervision and consultation requirements.

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

	Commentator	Position	Comment	Committee Response
			(1) Works for a private law firm, a legal services organization (including the state protection and advocacy organization), or a public defender's office that has been approved by the presiding judge of the local superior court or the supervising judge of the local probate court to accept appointments under Probate code section 1470 or 1471; and (2) Is directly supervised by an attorney working in the same firm, organization, or office who satisfies the applicable experience requirements in (d), or is employed by the state protection and advocacy agency.	
			2. Education Requirement in Amended Rule 7.1101(g) Proposed Rule 7.1101(g) sets out more tailored and specific education requirements for court-appointed counsel. We strongly support these new requirements.	The subject matter of education that may be applied to meet the rules' requirements is now specified in rules 7.1102(d) and 7.1103(d). No further response is required.
			3. Modify GC-255 Form To Permit Termination of a Conservatorship or Create a New Form. The Judicial Council proposes to modify Forms GC-010 and GC-011. We support the proposed changes, subject to our comments above.	No further response is required.
			In addition, we request that the Judicial Council modify Form GC-255, which is the form to terminate a guardianship, by adding language to permit termination of a conservatorship.	The committee does not recommend development of a statewide form to petition for termination of a conservatorship, as that form is beyond the scope of this proposal. The committee will retain the

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			Alternatively, the Judicial Council could create a new form to do so. There is no form for adults who seek to terminate their own conservatorship. Adults with intellectual and developmental disabilities must use Form GC-255 when they petition to terminate their conservatorship, although the form is clearly not written for an adult to use. We ask the Judicial Council to address this need by modifying the existing form, or by creating a new form for termination of conservatorship.	suggestion for future consideration.
3.	Orange County Bar Association by Nikki P. Miliband, President Santa Ana	A	No specific comment.	The committee appreciates the bar association's comment. No further response is required.
4.	Spectrum Institute Palm Springs by Thomas F. Coleman Disability and Guardianship Project by Nora J. Baladerian, PhD Disability and Abuse Project	AM	We offer the following comments to the proposed change in Rule 7.1101. The topics required to be included in mandatory training are generally good. However, we suggest that two additional matters be added: (a) alternatives to guardianship, including supported decision-making, and supports and services available to make such alternatives feasible; and	The committee appreciates Spectrum Institute's comments. The committee recognizes that an informed determination of whether a conservatorship is the least restrictive alternative necessary to protect the proposed conservatee requires awareness and consideration of alternatives. The committee has added less-restrictive alternatives to conservatorships, including supported decisionmaking, to the subjects included in rule 7.1103's annual education requirements.

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

	Commentator	Position	Comment	Committee Response
			(b) disability and sexuality, especially as those issues pertain to the topics of rights, abuse, and capacity. There is a growing interest, indeed a movement, in California and throughout the nation to require serious exploration of alternatives to guardianship and conservatorship in the pre-planning and judicial review process. Well educated court-appointed attorneys are an integral part of that process. They should receive training on that subject matter. The issue of sexuality of seniors and people with developmental disabilities is delicate and is often avoided altogether or handled in the most superficial manner in conservatorship proceedings. Therefore, it is important to have this topic specifically mentioned in training requirements. Assuming that the matter will be covered in other general categories runs contrary to human nature. The natural reaction of most people is to avoid the topic of disability and sexuality.	The committee does not recommend adding the suggested topic to the subjects included in rule 7.1103's annual education requirements. The committee anticipates that the education on the rights of conservatees and persons with disabilities under rule 7.1103(d) will address these issues.
			Finally, we apologize that op-ed in the Daily Journal contains an error. A closer reading of the proposal has clarified that local courts may impose greater training requirements. A communication will be sent to the publication today asking the editor to publish a follow-up notice of correction.	The committee appreciates the additional comments submitted as a copy of an editorial in the *Daily Journal.*

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

	Commentator	Position	Comment	Committee Response
			*Excerpts from Thomas F. Coleman, "Proposed Rule Aims to Improve Legal Advocacy in Conservatorship Proceedings," *Daily Journal* (Apr. 13, 2018): This rule change would not ensure access to justice for people with disabilities in conservatorship proceedings. But the proposal is a step in the right direction. One good aspect is that the revision to Rule 7.1101 of the California Rules of Court would apply to attorneys appointed in general and limited conservatorships. This could have a beneficial effect on seniors as well as adults with developmental disabilities. Thus, more people could potentially benefit. Another positive aspect is the training requirements included in the committee's proposal. Among the most important training requirements are subject matters that are crucial to effective advocacy and defense practices for people who have serious cognitive and communication disabilities. According to the committee's proposal, subjects that must be covered in mandatory continuing education courses include the rights of persons with disabilities under state and federal law, like the Americans with Disabilities Act. Training on strategies for communicating with a client who has cognitive disabilities,	No further response is required.

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

	Commentator	Position	Comment	Committee Response
			ascertaining the client's wishes, and presenting those wishes to the court is also required. The recognition, evaluation, and understanding of abuse of people with disabilities is a must. Training is required on the effects of physical, intellectual, and developmental disabilities on a person's capacity to function and make decisions. How to identify and effectively collaborate with experts from other disciplines is also part of the mandatory training. So far so good. But some significant problems remain. * * * One major omission in subject matter is the failure to require training on less restrictive alternatives to conservatorship, including the identification of community resources that would make such alternatives feasible. There is a growing movement for supported decision-making as an alternative to guardianship and conservatorship in California and throughout the nation. It is essential to have attorneys who are trained on such alternatives and that they insist that court investigators, petitioners, and judges consider them. This subject matter should be added to the committee's proposal. Even if the committee were to make these suggested changes, there is much more work to	The committee has added instruction on less restrictive alternatives to conservatorship, including supported decisionmaking, to the subject matter listed in rule 7.1103(d). The remaining comments raise important concerns, but are beyond the scope of this

	Commentator	Position	Comment	Committee Response
			do to ensure access to justice for seniors and people with disabilities in conservatorship proceedings. Attorneys could sit through such trainings but not implement the principles in actual practice. Without detailed requirements for training contents, without performance standards, without adequate funding for legal services, and without effective monitoring mechanisms, the training components in the committee's proposal are only theoretically beneficial to these vulnerable clients. The State Bar of California needs to put flesh on the bones of this educational framework. Specific content needs to be required by the State Bar before authorizing CLE credits for any training program. There should not be a blanket authorization to local bar associations allowing them to include whatever they want in such trainings. That is what has been happening now and some of the training programs are sorely lacking. There should be performance standards to which the trainings relate. Attorneys need to know in no uncertain terms exactly what is expected of them in each of the areas of training. These should not be seminars on "best practices" which can be ignored. It may take legislation to specify performance standards, or the county governments that pay the attorneys	proposal.

	Commentator	Position	Comment	Committee Response
			can attach performance standards to the money flow. However it occurs, performance standards are a must. Speaking of funding for legal services, it must be adequate enough to enable court-appointed attorneys to perform the legal services they are told they should deliver to these clients. It would be unfair for a court to authorize 10 hours of services in a case when, in fact, it would take 20 hours to do all of the things mentioned in the training program or detailed in the performance standards. Most of these clients cannot complain to the court or to the State Bar about ineffective assistance of counsel, conflicts of interest, or violations of ethical standards such as confidentiality and loyalty. The nature of their disabilities precludes them from understanding such things, much less filing formal complaints about deficiencies in legal services. In order to make the complaint process accessible to clients with such disabilities, there should be random audits of a sample of attorneys in each county. As the funding source for the legal services—and as the public entity responsible for ensuring ADA-compliant legal services—the county could contract with the State Bar to conduct such audits. Indeed, there is much more work to do in order	

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

	Commentator	Position	Comment	Committee Response
			for seniors and people with disabilities to have meaningful access to effective advocacy and defense services in conservatorship proceedings. The committee's proposal is an honorable first step. The next step is for the Probate and Mental Health Advisory Committee to adopt the modifications suggested here. But most importantly, once these changes go into effect on Jan. 1, 2019, advocates for conservatorship reform need to work closely with the State Bar, the Legislature, and boards of supervisors in all of the counties to implement the additional reforms upon which true access to justice depends.	
5.	Superior Court of Los Angeles County (no name provided)	AM	We strongly support the clarification that appointed counsel is the attorney himself or herself and not the entire firm. Los Angeles Superior Court (LASC) has a local rule making this specification but it will be more appropriate and clearer to all Bar members that appointment is individual. Other than the concerns set forth below, LASC supports the proposed changes. The current rule, CRC 7.1101(g), allows for courts to establish higher qualification or continuing education requirements and allowed the court to impose other requirements, including an application by private counsel. Although the proposed rule relocates its	The committee appreciates the court's comment. No further response is required to this specific comment. Please see below for responses to the court's concerns. The committee does not intend the amendments to

	Commentator	Position	Comment	Committee Response
			authorization of additional local requirements for higher qualification and education requirements to subdivisions (d) and (g) of the proposed rules, the provision allowing for the court to impose other requirements, including an application by private counsel, has been deleted from the proposed subdivisions. The Los Angeles Superior Court (LASC) panel of court-appointed private counsel attorneys is approximately 200 attorneys each year. For the orderly review of the appropriate documentation submitted, based on the current rule, LASC relied specifically on the ability to have an application for the panel to be submitted along with the required documentation. By deleting that portion of the rule as to an application, it is unclear as to whether the court can impose the requirement of a separate application along with the mandatory Judicial Council forms, GC-010, the Initial Certificate of Qualification for Appointment as Counsel of Record along with mandatory GC-011, the Annual Certificate of Court Appointed Counsel. In addition, as a part of the application, LASC has in its application, provisions relating to the issues of attorney compensation, attorney conflicts and discretionary appointments of counsel which terms are all agreed to by the applicant. Thus, the proposals in both subdivisions (d) and (g) should read:	preclude a court from adopting local rules imposing additional requirements on attorneys seeking appointment under section 1470 or 1471. The committee has revised rules 7.1101(d) and 7.1104(a) to clarify that a local court has the authority to adopt additional requirements, including an application requirement.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			(d)(4) A court may develop local rules that impose additional experience requirements for counsel appointed under section 1470 or 1471, including an application by private counsel. (g)(4) A court may develop local rules imposing additional education requirements for attorneys to qualify for appointment under section 1470 or 1471, including an application by private counsel.	
			Although the court understands the proposal relates to establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code, as it relates to subdivision i, which is the initial and annual attorney certification, future rules would need to be adopted to ensure that not only has the attorney met both the requirements for education and attorney experience, but that rules also be written to address issues of failure to meet the requirements of annual certification or meeting a performance standard in the role as court-appointed counsel.	The committee intends rule 7.1105 to ensure that an attorney has met the requirements in the rules, and does not recommend specifying statewide procedures for addressing failure to meet the requirements. Those procedures are best left to the discretion of local courts.
			Also, LASC requests that the Judicial Council consider adding a procedure to the Rule allowing for the court to remove an otherwise qualified attorney from the appointed counsel certification list. There are instances in which an attorney meets the stated requirements for	The committee does not recommend the suggested change. Rules 7.1101–7.1105 establish minimum statewide requirements as required by section 1456. Just as a local court has the authority to establish procedures required for placement on a panel, so does the court retain

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

	Commentator	Position	Comment	Committee Response
			certification as appointed counsel, but for various reasons the bench officers are not comfortable appointing that attorney to cases before this county's Probate courts. A subsection to this Rule should be added providing a process for removal of qualified counsel from the list, with specificity regarding any required notice, hearing, or other process required as part of the removal procedure. Finally, the label for court-appointed counsel is not consistent throughout GC-010 and GC-011 as proposed. Specifically, sometimes the term "Counsel of Record" is used, while in other places it is stated as "Court-Appointed Attorney." Even the title of the two forms are inconsistent in this regard. LASC hopes to move away from the longstanding local use of the term "PVP counsel" or "Probate Volunteer Panel counsel" and instead to embrace a label such as "court-appointed counsel." Consistency with the state Rule and the Judicial Council forms would be helpful in this regard, both for LASC and the Bar. There is also the issue of hyphenation. Subsection (a)(1) of the proposed Rule 7.1101 defines "court appointed counsel" while the proposed GC-011 form states "Court-Appointed Counsel" in its title. LASC proposes a uniform use of the term "court-appointed counsel" throughout the Rule and JC forms.	authority to establish procedures for removal from a panel. Nothing in the rules provides that satisfaction of their requirements is *sufficient* to entitle an attorney to be placed on a panel or appointed as counsel. The committee believes that any such process should be developed at the local level, perhaps in conjunction with the county bar association, to ensure that it reflects the needs of the local legal culture. The committee has revised its recommendation to remove the term "counsel of record." The committee agrees that the term "court-appointed counsel" should be hyphenated wherever it occurs in the rule and forms.

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			Request for Specific Comments: **Does the proposal appropriately address the stated purpose?** The proposal does appropriately address its stated purpose of establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code. The proposal does allow the court to develop local rules to impose additional requirements. However, we suggest a slight modification to the proposed rule detailed in the suggested modifications above. **Would the proposal provide cost savings? If so please quantify.** It is not apparent that LASC would enjoy a cost savings caused by these proposed changes. Court staff would still be required to review, process, and track certified appointed counsel. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Implementation of these proposed changes might cause minimal one-time changes to the document names in the court case system,	See response to the comments above. No further response is required. No further response is required.

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

	Commentator	Position	Comment	Committee Response
			though any significant retraining or systematic changes caused by these changes is not anticipated. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** A three-month approval period by the Judicial Council for the proposed changes would appear to be sufficient for LASC, especially since LASC and other courts usually allow a transition time during which expired Judicial Council forms are accepted. It may take beyond this time period, however, for Guide & File and other automated document programs to be modified by other agencies. **How well would this proposal work in courts of different sizes?** The changes will work well in a large court such as LASC.	No further response is required. No further response is required.
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	We welcome the several substantive changes made by this proposal. We note, however, that the committee's rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that this rationale be removed or modified to prevent this result.	The committee appreciates the court's comment. No further response is required.

	Commentator	Position	Comment	Committee Response
			Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation as has been done for family law due to the lack of a statutory mandate. We have no concerns with this. However, the committee goes on to opine that the court's authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate as it does in family law, but instead flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several reasons. First, we believe it is incorrect. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court's authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county's payment of fees may create some practical authority to direct some financial aspects of the attorney-	The committee no longer relies on the rationale discussed by the commenter. The committee recognizes that appointment of counsel creates a presumptive attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings. The committee has not found any legal authority for the position that a proposed conservatee necessarily lacks the ability to select an attorney or to establish an attorney-client relationship or for the position that lack of either of those abilities is a necessary condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee's ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be an issue of fact for the court's or jury's determination in a proceeding for appointment of a conservator. The court's decision to appoint counsel to represent a proposed conservatee does

	Commentator	Position	Comment	Committee Response
			client relationship, it does not endow the county with the authority to interfere with the court's control over court-appointed counsel. Although a county may attempt to address issues contractually, such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern. **Does the proposal appropriately address the stated purpose?** Yes.	not, and should not be seen to, imply a determination about the client's ability or capacity. Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of the existing relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the California Rules of Court was adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer's obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of California (May 9, 2018, S240991) [p. 6].) No further response is required.

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
			Would the proposal provide cost savings? No. **What would the implementation requirements be for courts?** Minimal. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **How well would this proposal work in courts of different sizes?** Equally well.	No further response is required. No further response is required. No further response is required. No further response is required.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	**Does the proposal appropriately address the stated purpose?** Yes. **Would the proposal provide cost savings? If so, please quantify.** Possibly. As mentioned in the proposal, with the new initial education requirements, court appointed attorneys would be better prepared and more knowledgeable in the field, thus, maximizing their hours worked and reducing the need to request continuances, which could also result in a reduction of fees paid by the County. **What would the implementation**	The committee appreciates the comment. No further response is required. No further response is required.

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

	Commentator	Position	Comment	Committee Response
			requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. We would need to inform clerical staff of the changes to ensure that court appointed attorneys are submitting the most current version of the forms. Possibility of new local rules if the judges request that attorneys have additional experience requirements. This may also impact the number of qualifying attorneys. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** The preference would be to allow at least six-months to give the attorneys enough lead time to obtain additional training, if needed. **How well would this proposal work in courts of different sizes?** This proposal should work fine in courts of all sizes.	No further response is required. The committee does not recommend delaying the effective date of the rules. Rule 7.1101(e) provides that the rules are not retroactive and that an attorney who has submitted an initial certification under the existing rule is not required to submit a new initial certification. The amended annual education requirements take effect January 1, 2020, but attorneys will have 12 months to complete them. Annual education completed in 2019 must satisfy the rule then in effect. No further response required.

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

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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

	Commentator	Position	Comment	Committee Response
8.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS) (no name provided)	A	The JRS believes that these changes are necessary to: • Increase the annual MCLE requirements from 3 to 6 hours, and to more clearly specify the subject matter. • Add initial education requirements of 8 hours of related MCLE. • Clarify that conservatorship requirements apply to both probate limited and "general" conservatorships. • Eliminate the disparate treatment of public defenders, and instead to impose on them the	The committee appreciates the JRS's comment. The committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who wish to be appointed under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to be appointed under section 1470 or 1471 to represent conservatees and proposed conservatees. This separation will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but it will require additional education hours for an attorney who wishes to accept appointment to represent both categories of client. Each rule requires three hours of annual education in the area of representation that it covers. An attorney who wishes to be appointed to represent both wards and conservatees would need to meet the qualifications and complete the annual education requirements in both rules. The committee also recommends adopting an alternative to allow an attorney to qualify for appointment in either area by completing three hours of education in that area in the same subjects as required for annual education. Modifications in response to other comments have not affected the other benefits identified and endorsed by the JRS. Please see below for the committee's responses to the JRS's specific concerns.

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

	Commentator	Position	Comment	Committee Response
			same requirements as any other appointed counsel. • Permit an attorney who otherwise does not meet the experience requirements to qualify based on the experience of a supervising attorney who does qualify. • Strengthen the express authorization for local courts to impose broader education and experience requirements, as we have done. • Update the Judicial Council forms to conform to these changes. **Other Considerations:** The proposal seeks to mandate court operations/procedures that, instead, should be permissive/discretionary. The proposed rule should instead be in the form of guidelines or suggested practices. We note that the committee's rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that this rationale be removed or modified to prevent this result.	As mandated by Probate Code section 1456, the rules establish, as rule 7.1101 has since its adoption in 2007, minimum qualifications, education requirements, and certification requirements for counsel appointed by the court under Probate Code sections 1470 and 1471. The rule leaves courts free to impose more stringent requirements. The Judicial Council would not fulfill the specific mandate in section 1456 if it did not set mandatory minimum standards in the rules.

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

	Commentator	Position	Comment	Committee Response
			Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation like has been done for family law due to the lack of a statutory mandate. We have no concerns with this. However, the committee goes on to opine that the court's authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate like it does in family law but instead flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several reasons. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court's authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county's payment of fees may create some	The committee no longer relies on the rationale discussed by the commenter. As noted above in the response to the similar comment submitted by the Superior Court of Riverside County, the committee recognizes that appointment of counsel creates a presumptive attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings. The committee has not found any legal authority for the position that a proposed conservatee necessarily lacks the ability to select an attorney or to establish an attorney-client relationship or for the position that lack of either of those abilities is a necessary condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee's ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be an issue of fact for the court's or jury's determination in a proceeding for appointment of a conservator. The court's decision to appoint

	Commentator	Position	Comment	Committee Response
			practical authority to direct some financial aspects of the attorney-client relationship, it does not endow the county with the authority to interfere with the court's control over court-appointed counsel. Although a county may attempt to address issues contractually such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern.	counsel to represent a proposed conservatee does not, and should not be seen to, imply a determination about the client's ability or capacity. Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of the existing relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the California Rules of Court was adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer's obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of California (May 9, 2018, S240991) [p. 6].)
9.	Trusts and Estates Section of the California Lawyers Association	N	TEXCOM does not agree with the amendments, as proposed, but believes this issue is worthy of	The committee appreciates TEXCOM's concerns with the proposed amendments to rule 7.1101.

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

	Commentator	Position	Comment	Committee Response
	Executive Committee (TEXCOM) by Chris Carico, Attorney at Law Los Angeles		further consideration. TEXCOM would welcome the opportunity to work with the Probate and Mental Health Advisory Committee and other interested stakeholders on the development of an alternative proposal, in light of our concerns. As discussed below, we are concerned primarily with the following: 1. We are concerned that the proposed amendments will not promote more effective advocacy because, in the long run, they will tend to discourage advocates from joining the appointments panels. 2. Access to the proposed specialized area of law is unduly restricted. The experience requirements appear to create a situation in which the only attorneys qualified to be on appointment panels will be attorneys who are already on appointment panels.	Please see the committee's responses to the more detailed specific comments, below. The committee recognizes TEXCOM's concern and has revised the proposal to reduce the quantity of the requirements while focusing their content more closely to the experience and education needed by an attorney to provide effective representation to a client subject to a petition for appointment of a guardian or conservator. The committee does not intend to restrict entry into guardianship or conservatorship practice beyond the extent necessary to ensure that counsel appointed under section 1470 or 1471 are qualified to represent their clients' needs and interests, as required by section 1456. The committee has revised the proposal to expand the qualifying experience that may be gained as retained counsel, such as experience representing petitioners, and to establish alternative qualifications that allow less-experienced attorneys to be appointed if they either work for an approved organization and are supervised by or working closely with an experienced attorney or have completed introductory education requirements and are working closely with an

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

	Commentator	Position	Comment	Committee Response
				experienced attorney.
			3. While not all TEXCOM members agree, there is a concern that the requirement of six hours of specialized education per year may be excessive. The requirement seems onerous not only in relation to the normally required MCLE, but also because, like the experience requirement, it seems to unduly block access to the appointments list. As anecdotal evidence, several TEXCOM members with decades of experience in conservatorship and guardianship matters would not satisfy the rule's strict education and experience requirements to be on the panel.	In response to this and other comments, the committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who wish to be appointed under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to be appointed under section 1470 or 1471 to represent conservatees and proposed conservatees. This separation will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but it will require additional education hours for an attorney who wishes to accept appointment to represent both categories of client. Each rule requires three hours of annual education in the area of representation that it covers. An attorney who wishes to be appointed to represent both wards and conservatees would need to meet the qualifications and complete the annual education requirements in both rules. The committee also recommends adopting an alternative to allow an attorney to qualify for appointment in either area by completing three hours of education in that area in the same subjects as required for annual education.
			<u>FACTUAL ASSUMPTIONS</u> For purposes of our analysis, we have assumed the following facts to be true:	
			1. For advocacy to be effective, there must be	The committee agrees with this assumption.

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

	Commentator	Position	Comment	Committee Response
			advocates in the first place.	
			2. An attorney who represents a proposed ward or conservatee under Probate Code sections 1470 and 1471 has an important job that deals with fundamental constitutional and personal rights. These attorneys must be trained to serve their clients properly.	The committee agrees with this assumption.
			3. Appointment to represent proposed conservatees and wards traditionally has been an entry point for attorneys (particularly young attorneys) to become involved in probate matters, particularly disputed matters. This has been an incentive for attorneys to make themselves available for appointment.	The committee takes no position on the accuracy of this assumption, but questions whether the assumed state of affairs is entirely desirable given the importance of the fundamental rights assumed in 2, above.
			4. A private attorney appointed under Probate Code sections 1470 and 1471 often is not paid, and frequently is paid at a "county rate" that is much lower than the rates generally charged by attorneys. Many of the more experienced attorneys approach the appointments calendar as a pro bono opportunity and do not seek payment from the County. It is their way to give back.	The committee has no basis to determine the accuracy of this assumption and notes that the compensation of counsel is beyond the scope of this proposal. The committee also notes, however, that sections 1470(b) and 1472(a)(1) require the court, at the conclusion of the matter, to "fix a reasonable sum for compensation and expenses of counsel. Sections 1470(c)(3) and 1472(b) provide that, if the court finds that the client or the client's estate is unable to pay all or part of that sum, the duty to pay the attorney falls on the county. Nothing in these statutes requires the court to consider the county rate when fixing reasonable compensation. For guidelines to assist the court in determining a person's eligibility for county payment, see Cal. Rules of Court, Appendix E.

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

	Commentator	Position	Comment	Committee Response
			5. Work as an appointed attorney can be satisfying. However, it is not uncommon that parties are surprised by the insertion of an appointed attorney into their affairs, and they resist and resent the appointed attorney.	The committee takes no position on the accuracy of this assumption, but notes that the statutes authorize (section 1470) or require (section 1471) appointment of counsel for a proposed conservatee only after a determination, presumably informed by the investigator's report under section 1826, that the client is not otherwise represented by counsel and either has requested appointment of counsel or does not plan to retain counsel. The investigator's report, due no later than five days before the hearing on the petition, must discuss the conservatee's communications regarding representation by counsel. Even if a party's surprise at the appointment of counsel might be excused notwithstanding receipt of the report, the possibility of surprise would not relieve the court of its statutory authority or duty to appoint counsel for the person when the statutory criteria warrant it.
			6. Attorneys are consistently instructed that the best way to have a successful practice is to choose one's clients. Attorneys who are appointed cannot choose their clients, and they thereby increase the risks inherent in their practices.	The committee takes no position on this assumption, but has considered section 6068(h) of the Business and Professions Code, which provides that an attorney has a duty "[n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed," in its deliberations.
			7. More than a few attorneys see service on the appointment panel as a thankless task, but agree to serve out of a sense of duty to the profession or to the community.	See response to the previous assumption.

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

	Commentator	Position	Comment	Committee Response
			8. Probate Code section 1456, specifies education and other requirements for a. Court-employed staff attorneys b. Examiners c. Investigators d. Judges on probate assignments, and e. Attorneys appointed under Probate Code sections 1470 and 1471 Of the persons employed in these categories, only private attorneys pay for their own education, and only private attorneys are not paid regular salaries for their work with respect to guardianships and conservatorships. In many counties, the only attorneys commonly appointed under Sections 1470 and 1471 are private attorneys.	The committee does not question this assumption, but notes that the education requirements for probate court employees are set forth in rule 10.478 (*Court Investigator:* 18 hours within one year of start date; *Court attorney:* 18 hours within 6 months; *Examiner:* 30 hours within one year, including 18 hours on guardianships and conservatorships. All of the foregoing: 12 hours of annual education. For attorneys and examiners, six of the 12 hours must be in guardianships and conservatorships.). The education requirements for judicial officers are set forth in rule 10.468 (Initial: 6 hours in first 6 month; continuing: varies depending on size of court, 9 or 18 hours every three years). These requirements are much more demanding than those proposed for court-appointed counsel in rule 7.1101 as circulated for comment (8 hours of initial education and 6 hours of annual education) or in rules 7.1102 and 7.1103 as currently proposed (three hours of annual education in each). Nevertheless, the committee is working with Judicial Council staff to develop online education available statewide free of charge to enable attorneys to meet their annual education requirements.
			ANALYSIS 1. The Increase in the MCLE Requirement Is Likely to Discourage Attorneys from Making Themselves Available for Appointment	The committee shares TEXCOM's concern that the burden of the rule's educational requirements on attorneys not exceed their benefit to clients.
			A. We Believe the Proposed Requirement of Six Hours of Specialized Education Each	The committee recognizes that six hours of annual education are more than are currently required

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

	Commentator	Position	Comment	Committee Response
			Year is Excessive The rule proposes requiring attorneys to complete six hours of specified continuing education each year. Specifically, it proposes: Except as provided in (2) <u>each calendar year</u> an attorney must, as a condition of ongoing or further appointment, complete six hours of education approved for MCLE credit by the State Bar in one or more of the subjects specific in (g)(1). (Emphasis added.) Subdivision (g)(1) then lists education topics that are specific to guardianships and conservatorships. These range from statutes and rules of court applying to guardianships and conservatorships to special considerations in representing a child or an older adult.	under rule 7.1101. To balance the demand on attorneys' time and finances with the need for well-trained attorneys, the committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who wish to be appointed to represent wards or proposed wards; and rule 7.1103, for attorneys who wish to be appointed to represent conservatees and proposed conservatees. The committee has reduced the number of hours required for each type of appointment to three hours annually and eliminated the initial education requirement. An attorney wishing to be appointed to represent clients in both categories would still be required to meet the requirements of both rules, that is, six hours of education annually. Even for these attorneys, the committee notes that six hours per year, though more than the 8 hours every three years required of appointed counsel in child welfare proceedings, is less than the 8 hours per year required of counsel appointed in juvenile justice proceedings or family law custody proceedings. The committee has also revised the proposal to separate the subjects applicable to attorneys appointed to represent wards or proposed wards (rule 7.1102(d)) from the subjects applicable to attorneys appointed to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity (rule 7.1103(d)). An attorney who wishes to accept appointment to represent clients

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

	Commentator	Position	Comment	Committee Response
				in only one category may focus on training directly relevant to that representation.
			As noted in the Implementation discussion of the proposed rule, California attorneys generally must complete 25 hours of continuing education every three years, which education must include ethics and substance abuse. If an attorney who wishes to make himself or herself available for appointment is required to take 6 hours of specialized coursework each year, then he or she will have consumed much of his or her mandatory MCLE obligation (18 out of 25 hours) with the required specialized classes, and will still be required to take the ethics and substance abuse courses.	The State Bar's requirement of 25 hours every three years sets a minimum threshold. An attorney is encouraged to take as many additional hours as needed or desired to acquire and maintain competence in a chosen area of practice.
			The attorney who takes the required courses will be specialized for guardianship and conservatorship work, but if he or she wishes to take other course work—for example, courses in taxation, recent developments, litigation and discovery—he or she will be burdened in a way that attorneys specializing in other fields are not burdened.	The committee understands that counsel eligible for court appointment in other specialized areas of law are required to meet experience and education requirements equally or more demanding than the requirements proposed here. See, e.g., rules 5.242 (family law child custody: 12 hours of initial education; 8 hours of annual); 5.660 (child welfare: 8 hours initial education or recent experience; 8 hours ongoing every 3 years); 5.664 (12 hours initial education within previous 12 months or 50% of practice; 8 hours annual).
			Since guardianship matters infrequently involve substantial estates, and court-appointed counsel is generally compensated at the County Rate, there is a significant financial disincentive for	The committee understood from assumptions 4 and 7, above, that—notwithstanding the statutory requirement that the court, on conclusion of the matter, fix a reasonable sum for compensation

	Commentator	Position	Comment	Committee Response
			the highly qualified attorneys with thriving practices to participate on the panels as a service to the court and the public.	and expenses of counsel—appointed counsel serve out of a sense of duty, usually pro bono. Counsel who serve under those expectations would seem likely to regard any compensation as a windfall. Nevertheless, the committee does not read section 1470 or 1472 to require or authorize the court to consider a county rate when fixing reasonable compensation.
			Highly qualified attorneys may choose to volunteer time on the panel as a service to the court and the public. But, the addition of substantial education requirements that the private attorney must personally pay for creates another large disincentive to their participation. In short, it makes the private attorneys pay to volunteer.	The committee has reduced the required number of hours of annual education to allow more attorneys to meet the requirement. The hours required would be consistent with or fewer than the hours required for attorneys specializing in other fields.
			Moreover, if we presume that the State Bar's requirement of 25 hours of MCLE in three years is reasonable, then the proposed rule's requirement of six hours of specialized education each year appears unreasonable.	The committee notes that the State Bar has established "Minimum Continuing Legal Education" requirements. Attorneys who practice in areas of law that require specialized knowledge are encouraged, and may be required, to complete additional hours of education to be able to provide competent representation to their clients. Statutory mandates to establish minimum education requirements in specific fields, such as that in section 1456, reflect the Legislature's determination that additional, focused education is especially important in those fields.
			More generally, it seems likely that the increase	The committee has reduced the number of hours

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

	Commentator	Position	Comment	Committee Response
			in specialized MCLE required by the proposed rule will be a burden that will discourage attorneys from making themselves available for appointment. This applies especially to young attorneys who have traditionally assisted in filling the appointments lists. B. We Do Not Believe the Proposed Alternatives Solve the Problem The Probate and Mental Health Advisory Committee (Committee) acknowledges that, "The proposed amendments to the education requirements may lead to a short-term reduction in the number of qualified attorneys available for appointment." TEXCOM believes this is definitely the case, but seriously questions whether the reduction will be short-term only. The Committee suggests that this predicated short-term reduction in the number of qualified attorneys available for appointment will be counteracted by "the alternative experience requirements in rule 7.1101(e) and the transitional provisions in rule 7.1101(k)." However, the "alternative experience requirements in rule 7.1101(e)" will not minimize the effect of the new education requirements, because rule 7.1101(e) itself requires the appointed attorney to have "completed the education required in (d)." Moreover, the alternative experience	of education to reduce the burden on appointed attorneys. The hours required would be consistent with or fewer than the hours required for attorneys specializing in other fields, including juvenile justice and family law child custody proceedings. The committee has modified the recommendation to minimize any reduction in the number of available, qualified attorneys by making clear that the amendments are not retroactive; that an attorney who has submitted an initial certification of qualifications under existing rules need not submit a new initial certification; and that the annual education requirements apply to education completed after January 1, 2020. The committee has modified its recommendation to remove the initial education requirements and to expand the alternative qualifications. In addition to authorizing qualification by working for an approved organization supervised by or in close consultation with an experienced attorney, the committee has authorized a second alternative

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

	Commentator	Position	Comment	Committee Response
			requirements will open the door of appointment eligibility to a very small number of private attorneys who have met the new education requirements, and who can be "directly supervised by an attorney working in the same firm, organization or office who satisfies the applicable experience requirements in (d)."	qualification, directed primarily at sole practitioners, by completing three hours of initial education within the 12 months before initial availability for appointment and working in close consultation with an experienced attorney.
			Similarly, the transitional provisions in rule 7.1101(k) will not have a real impact on the number of attorneys who make themselves eligible for appointment. At best, those rules state that an attorney qualified to be appointed before 2020 can remain on his or her cases even if he or she opts out of the new system. It seems likely that the new MCLE rules will have a sustained long-term effect of discouraging attorneys from making themselves available for appointment.	The committee has modified its recommendation to eliminate the transitional provisions. The reduction in the number of hours and subjects required for annual education, the availability of a year to complete the first set of new requirements, and the projected availability of free online education are intended to encourage attorneys to continue to make themselves available for appointment.
			<u>2. The Experience Requirements Present a Potential Problem That May Slowly Reduce the Number of Attorneys Eligible for Appointment</u> Under proposed rule 7.1101(d)(2)(A), an attorney can be qualified to be on the conservatorship appointment panel if, "within the three years immediately before the date of first availability," he or she "(A) represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships." The problem is that the only realistic way to represent three proposed conservatees in three years is to be appointed by	The committee has modified its recommendation to allow an attorney to count experience in the five years before first availability for appointment and has simplified the experience requirement in rule 7.1103(a) to require representation of a petitioner, objector, *or* (proposed) conservatee in at least three conservatorships, including mental health conservatorships. Neither the statutes nor the rule have ever been intended to require previous appointment as a condition of appointment. The statutes assume that a proposed ward or conservatee may retain counsel if they wish. The committee recognizes that this may be

	Commentator	Position	Comment	Committee Response
			the court to represent them. But, if an attorney can only be appointed if the attorney has already been appointed, how does the attorney get appointed in the first place? Alternatively, under proposed rule 7.1101(d)(2)(B) and (C), an attorney can be qualified to be on the conservatorship appointment panel if he or she Completed at least two of the following tasks in the last three years: (i) Represented petitioners in three conservatorship cases from start to finish, or (ii) Represented a party in at least three contested conservatorships, or (iii) Represented someone for whom the court could appoint a legal counsel under various provisions of the Probate Code (presumably without having been appointed) AND (i) Represented fiduciaries in three complete court-filed accounting proceedings, or (ii) Prepared three wills or trusts, three durable powers of attorney for health care, and three durable powers of attorney for asset management. We recognize that this proposed rule is similar in ways to the existing rule, changing the relevant time period from five years under the current rule to three years under the proposal.	a rare occurrence, but nevertheless does not believe the rarity diminishes the value of the experience acquired. The committee has modified its recommendation to remove the language in question and to address many of TEXCOM's concerns. See the response to the comment above.

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

	Commentator	Position	Comment	Committee Response
			We believe this entire rule should be re-evaluated as an experience qualification. Few young attorneys will be in on the "start" of a conservatorship case, and some conservatorship cases literally never end – depending on the lifespan of the conservatee. Not many attorneys have three conservatorship cases in three years, and even fewer have three contested conservatorship cases in three years. An attorney who wanted to get into the conservatorship field, and who wanted to make himself or herself available for appointment, would be hard pressed to obtain that experience. With the prevalence of revocable trusts, not many attorneys will do three complete court-filed accountings in three years. Finally, we believe the idea that preparation of a few estate planning documents (under proposed rule 7.1101(d)(2)(C)(ii), which would change the current requirement from five of the identified documents to three) would in any way prepare an attorney to represent a proposed conservatee in a real court case is an anomaly. In today's world of computerized forms, an	The committee agrees with the comment and has removed representation of a fiduciary on a petition to approve an accounting from the applicable qualifications. The committee also notes that appointment of an attorney to represent a ward or conservatee when a fiduciary fails to file an account is governed by section 2620.2, not by section 1470 (except for compensation) or 1471. The requirements of these rules, therefore, do not apply to those attorneys. The committee agrees that general estate planning experience does not prepare an attorney to represent a conservatee and, as suggested, has eliminated this element from the applicable experience requirements.

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

	Commentator	Position	Comment	Committee Response
			attorney might meet this requirement within a week or two of passing the bar. Experienced conservatorship lawyers have serious concerns about including this as an experience requirement. We are also concerned about the idea that representing a fiduciary in an accounting proceeding could prepare an attorney to represent a proposed conservatee or ward. The tasks are very different. Illustrations If a medical doctor with a geriatrics specialty went to law school and took courses specializing in guardianship and conservatorship law and graduated first in her class, then hung up a shingle to practice as a solo attorney, she could not qualify to be on an appointments panel. As a solo with no in-house supervisor, she might never qualify to be on an appointments panel. If a 65-year old attorney with a great amount of litigation experience in the probate field, who had represented many proposed conservatees in the past, but not in the recent past, wished to go on the appointments panel to finish his or her career with some pro bono work, he or she would not qualify for the appointments panel. TEXCOM questions whether this is the policy we want and believes the requirements should	The committee agrees that preparing an accounting, without more, would not sufficiently prepare an attorney to represent a conservatee or ward. The committee has removed that requirement from the proposed rules. The committee has modified the alternative qualifications to allow a sole practitioner to qualify for appointment after three hours of applicable initial education if the attorney is working in close consultation with an experienced attorney. The committee recognizes that this attorney might not immediately qualify for appointment but, for reasons similar to those mentioned by TEXCOM, above, believes that at least some experience or education specific to conservatorships is appropriate before appointment. In response to the concerns raised by TEXCOM and other commentators, the committee has

	Commentator	Position	Comment	Committee Response
			be more flexible, perhaps allowing the probate judges to exercise some discretion and permitting some variation based on different circumstances in the various counties.	relaxed the amount of experience and education required by the proposed rules while focusing their content more directly on conservatorships and guardianships. In addition, the amended rules authorize a court to appoint an attorney who does not meet the specific qualifications and annual education requirements on a finding of necessity.
			Alternative Work Experience We endorse the concept of "alternative work experience" but believe it should be expanded to include an arrangement that involves supervision by a more experienced lawyer in a different firm and not just the same law firm. Otherwise, attorneys in small firms or solo practitioners will have little to no ability to obtain the necessary work experience in the field.	The committee agrees with the suggestion and has modified the alternative qualifications to allow an attorney working in close consultation with an experienced attorney to qualify for appointment if other work or education requirements are met.
			As noted above, the attorney needs work experience to get on the panel, but the only way to get the experience as court-appointed counsel is to be on the panel and be appointed by the court. As an additional alternative, for courts that have the necessary resources, the combination of an in-depth multi-day training course for newer lawyers focusing on guardianships and conservatorships and assignment of an experienced attorney to serve as mentor to the newer attorney may provide newer attorneys with the necessary opportunity to get the required experience.	The committee has never intended that the rule require previous appointment as a condition for later appointment. The statutes and the existing rule assume that a proposed ward or conservatee may retain counsel in some circumstances. The committee has modified the amended rules to clarify that the required experience may be acquired by representing appropriate clients, regardless of whether the representation was initiated by appointment or retention. In addition, the alternative experience requirements in proposed rules 7.1102(d) and 7.1103(d) allow an attorney without the required experience to accept appointment if other conditions are met.

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

	Commentator	Position	Comment	Committee Response
			To encourage older more experienced attorneys to serve as mentors without the risk of liability for the newer attorneys' mistake, it would need to be clear that the newer attorney alone is counsel for the client, with the associated malpractice risk. CONCLUSION Conservatorship and guardianship cases are important, and deal with some of the most fundamental rights. Proposed conservatees and wards deserve qualified counsel, who are prepared to represent them in cases that are crucial to their long-term care and well-being. Due process rights must be recognized, guarded and preserved. Advocates must understand the issues and be able to communicate with their clients.	The committee believes that the formal relationship between an attorney appointed under section 1470 or 1471 and an attorney with whom the appointed attorney consults is best left to an agreement between the attorneys themselves or their firms and organizations. Nothing in the proposed rules requires that a supervising or consulting attorney be named in an appointment order or have the authority to direct the appointed attorney necessary to establish a basis for liability under rule 5.1.
			It makes sense to design rules to do our best to ensure that attorneys representing proposed conservatees and wards are qualified. That is the purpose underlying Probate Code section 1456. On the other hand, we do not believe the State should impose education requirements that are so burdensome that qualified attorneys who are otherwise willing to make themselves available for appointment opt out, because the MCLE becomes too burdensome and expensive. We also do not believe the State should impose experience requirements that are difficult for	The committee agrees that the rules required by section 1456 must ensure that appointed attorneys are qualified. The comments on this proposal reveal a wide range of opinion regarding the nature and amount of experience and education that would be sufficient for that purpose. The committee intends the proposed rules to establish minimum requirements that ensure adequate qualification without being excessively burdensome or difficult to satisfy.

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

	Commentator	Position	Comment	Committee Response
			many attorneys to reach. The proposed rule appears to be designed to establish a group of specialists who will be able to do the best possible job as appointed attorneys for proposed conservatees and wards. However, if the rule in fact creates specialists, the specialists will not find themselves compensated like other specialists in the trust and probate field, and they will be doing work that often is not satisfying. This suggests that, as time goes by, the rules will be self-defeating, and that good and experienced attorneys will leave the field. At the same time, young and eager attorneys will find it difficult to make themselves qualified to serve. Ultimately, there is a danger that the perfect is being made the enemy of the good.	The committee's intent in developing the rules in this proposal has been to fulfill the mandate of section 1456: to specify minimum qualifications, hours and subject matter of education, and reporting requirements to ensure adequate representation by attorneys appointed under section 1470 or 1471. The specification of any minimum standards will necessarily reduce the size of the pool of attorneys qualified to accept appointment. The committee has consistently borne this effect in mind and sought to mitigate it without abdicating its statutory duty.
10.	Tulare County Public Guardian's Office by Francesca Barela, Deputy Public Guardian Visalia	A	I feel it is important that our conservatees have adequate counsel. Our clients need good representation. Continuing education is important as well as knowledge of Probate Codes and laws. I agree with the proposed changes.	The committee appreciates the comment. No further response is required.

Qualification and Annual Education Rules for Appointed Counsel
(Probate Code, §§ 1470 & 1471)

EXISTING RULE	RECOMMENDED RULES
Basic qualifications for private counsel (7.1101(b)) Active member of State Bar for at least three years before initial appointment No discipline imposed in 12 months immediately before availability for appointment Errors & Omissions (E&O) insurance satisfactory to the court, minimum $100K/claim and $300K/year	***Basic qualifications for all (7.1101(c))*** Active member in good standing of State Bar ***OR*** Registered legal aid attorney qualified under rule 9.45 No discipline imposed in 12 months immediately before availability for appointment E&O insurance with minimum coverage of $100K/claim and $300K/year or self-insurance program at equivalent levels.
Basic qualifications for deputy public defenders (DPDs) (7.1101(c)) Active member of bar for at least three years before initial appointment E&O insurance satisfactory to the court, minimum $100K/claim and $300K/year ***OR*** Covered at an equivalent level by county self-insurance program	***Basic qualifications for all (7.1101(c))*** Same as above.
Local Rules (7.1101(g)) Court may establish higher requirements, additional requirements, and other requirements, like an application	***Local Rules*** ***Substantive (7.1101(d))*** No prohibition on additional or more rigorous requirements by local rule ***Procedural (7.1104(a))*** Local court administration, lists/panels, approval of legal service providers or public defenders (if contractors), applications, etc.
Experience required for appointment to represent wards (7.1101(b)(1), (c)) Within past 5 years, must have represented at least 3 wards or proposed wards in probate guardianships, minors in child welfare or juvenile justice, or minors in family law custody proceedings	***Experience required for appointment to represent wards (7.1102(a))*** Within past 5 years, must have personally represented a petitioner, objector, respondent, minor child, or nonminor dependent in at least 3 guardianships, child welfare proceedings, or family law child custody proceedings

OR Must be qualified for appointment (1) Under rule 5.660 and local rules or (2) Under rule 5.242, including under the alternative "experience" requirements of rule 5.242(g). ***OR*** If DPD who doesn't meet either of previous two requirements: 3+ years' representing children in child welfare or juvenile justice [Problems: PD doesn't represent children in child welfare; juvenile justice experience virtually irrelevant to guardianship proceedings; section 1470 doesn't authorize discretionary appointment of PD]	***OR*** Must satisfy experience requirements in 5.660(d) and local rules *or* in rule 5.242(f)
Alternative qualifications for appointment to represent wards (7.1101(b)(1), (c)) None, except as provided in rules 5.660 or 5.242. Unqualified DPDs may substitute for qualified DPDs if certified by the Public Defender as working under the direct supervisions of a qualified DPD.	***Alternative qualifications for appointment to represent wards (7.1102(b))*** • Work for approved attorney, firm, or legal service provide (NB: Not public defender, as 1470 does not authorize appointment of PD to represent wards) *and* • Supervised by *or* working in close consultation with experienced attorney ***OR*** • Three hours of qualifying education *and* • Working in close consultation with experienced attorney
Annual education required for appointment to represent wards (7.1101(b)(1)(C), 7.1101(f)) • 3 hours total, aggregated with conservatees' counsel • Any subject that qualifies for Minimum Continuing Legal Education (MCLE) credit in estate planning specialization • Exception: Permitted to represent a child in a guardianship only of the person if the attorney meets the annual education requirements for appointment in child	***Annual education required for appointment to represent wards (7.1102(c)–(d))*** • 3 hours, separate from conservatees' counsel • guardianship-specific, including child representation, Indian Child Welfare Act, child abuse and neglect • Approved for MCLE credit • Okay if in person or any State Bar–approved mode of distance learning

welfare or family law custody proceedings	
Experience required for appointment to represent conservatees et al. (7.1101(b)(2), (c) Within 5 years immediately before first availability, must: • Have represented 3+ (proposed) conservatees in probate or LPS conservatorships ***OR*** • Have done any three of the following: o Represented 3 petitioners in probate conservatorships; o Represented 2 parties in contested probate or LPS conservatorships; o Represented a party for whom the court could appoint counsel in 3 matters under specified section in division 4; o Represented fiduciary in 3 cases for settlement of account; or o Prepared 5 wills, trusts, durable health care POAs, or durable financial POAs ***OR*** • If DPD, in addition to above, 3 years' experience representing patients in postcertification judicial proceedings or conservatorships under the LPS Act	***Experience required for appointment to represent conservatees et al. (7.1103(a))*** Within 5 years immediately before first availability, must: • Have personally represented petitioner, objector, (proposed) conservatee, or person alleged to lack capacity or be gravely disabled in at least 3 separate proceedings, including at least one contest or trial, under either division 4 of the Probate Code or the LPS Act
Alternative qualifications for appointment to represent conservatees et al. None	***Alternative qualifications for appointment to represent conservatees (7.1103(b))*** • Work for approved attorney, firm, public defender, or legal service provider *and* • Supervised by *or* working in close consultation with an experienced attorney ***OR*** • Three hours of qualifying education *and*

	• Working in close consultation with an experienced attorney
Annual Education required for appointment to represent conservatees et al. (7.1101(f)(1)) • 3 hours total, aggregated with education required for appointment to represent wards • Any subject that qualifies for MCLE credit in estate planning and probate specialization	***Annual Education required for appointment to represent conservatees et al. (7.1103(c)–(d))*** • 3 hours, separate from wards • conservatorship-specific, including capacity, legal rights of conservatees, persons alleged to lack capacity, persons with disabilities, attorney-client relationship and legal ethics, special considerations for representing older adult or person with disability • Approved for MCLE credit • Permitted if in person or any State Bar–approved mode of distance learning
Exemption, waiver (7.1101(e)) • Courts with 4 or fewer authorized judges • Express written finding of no available qualified counsel or other *hardship* • All qualifications waivable, including licensing, absence of discipline, and adequacy of insurance (mitigated to some extent by requirement of adequate self-insurance)	***Exception (7.1104(b))*** • All courts • Express finding of *necessity,* orally on record or in writing • Necessity includes no available qualified counsel or special needs or interests of person to be represented • Applies only to experience, alternative qualifications, and annual education; no exception to licensing, disciplinary history, and insurance requirements
Certification Rule (7.1101(h)) Initial: "qualified under (b) or (c)," which lump licensing, no discipline, insurance, and experience together Must *immediately* advise court of discipline Annual: any "change" to discipline or insurance/self-insurance with descriptions of changes and has completed annual education Form submitted but not filed or lodged	***Certification Rule (7.1105)*** Initial: Attorney must certify separately that meets basic requirements (7.1101(c)) *and* is qualified under specific applicable rules (7.1102(a) or (b) for wards; 7.1103(a) or (b) for conservatees; or both) Annual: Attorney must (re)certify that meets basic requirements (7.1101(c)) *and* has completed applicable annual education (7.1102(c)–(d); 7.1103(c)–(d); or both) Must notify court of discipline *in writing within 5 court days* and describe

	Court may require documentation of any statement on form Form is confidential; submitted but not filed or lodged
Certification Forms (GC-010 and GC-011) • One form for initial certification (4 pp.) • Separate form for annual certification (1 p.) • Mandatory forms • Detailed, complex items, multiple alternatives, purpose not always clear • Some items more like application than certification, cross-reference other items (e.g., if you want this, complete this item unless this, in which case, complete that other item) • Submitted but not filed or lodged	***Certification Form (GC-010)*** • Single form for both initial and annual certification (2 pp.) • General items, with directions and space to explain answers • Basic qualifications (license, no discipline, insurance) must be certified initially, recertified annually • Initial qualifications certified once • Education compliance certified annually • Optional form • Asks general questions on first page; provides space on second page for explanation of details • Leaves more room for local courts to ask for additional information if they want it • Confidential; submitted but not filed or lodged Form GC-011 revoked.
Transitional provisions (7.1101(d)) • Three-month grace period for counsel appointed before effective date, then court discretion whether to allow continued representation, replace with qualified attorney, or appoint cocounsel • Court authority to appoint uncertified counsel for three months, then required to relieve if no submitted certification and appoint counsel who had submitted.	***Nonretroactivity clause (7.1101(e))*** • Amendments not retroactive • Attorney who submitted an initial certification of qualifications under old rules need not submit a new one ***Annual certification (7.1105(b))*** Applies to annual education requirements in effect in previous year, so gives appointed attorney a year to meet the new requirements.

Item number:37

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 8/21/2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Revisions to Continuance Forms
Revise forms CH-115, CH-115-INFO, CH-116, DV-115, DV-115-INFO, DV-116, EA-115, EA-115-INFO, EA-116, GV-115, GV-116, SV-115, SV-115-INFO, SV-116, WV-115, WV-115-INFO, and WV-116.

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

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Frances Ho, 415-865-7662 frances.ho@jud.ca.gov

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: 02/06/2019
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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Protective Orders: Revisions to Continuance Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms CH-115, CH-115-INFO, CH-116, DV-115, DV-115-INFO, DV-116, EA-115, EA-115-INFO, EA-116, GV-115, GV-116, SV-115, SV-115-INFO, SV-116, WV-115, WV-115-INFO, and WV-116

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 19, 2019

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov
Kristi Morioka, 916-643-7056
kristi.morioka@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee and Civil and Small Claims Advisory Committee jointly recommend revising 17 protective order forms: the request and order forms for continuances and accompanying information forms, where applicable, for several forms series. Changes to the order forms are recommended to ensure that these protective orders are properly entered into the California Law Enforcement Telecommunications 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.

Recommendation

The Family and Juvenile Law Advisory Committee and Civil and Small Claims Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2020:

1. Revise the *Request to Continue Hearing* form in each protective order form series (forms CH-115, DV-115, EA-115, GV-115, SV-115, and WV-115);

2. Revise the *Order on Request to Continue Hearing* form in each series (forms CH-116, DV-116, EA 116, GV-116, SV-116, and WV-116); and

3. Revise the information sheets *How to Ask for a New Hearing Date* (forms CH-115-INFO, DV-115-INFO, EA-115-INFO, SV-115-INFO, and WV-115-INFO) to reference correct items and to use the same plain language terms as used on forms 115 and 116.

The revised forms are attached at pages 9–43.

Relevant Previous Council Action

Effective July 1, 2016, forms 115 and 116 in the Civil Harassment Prevention (CH), Domestic Violence Prevention (DV), Elder or Dependent Adult Abuse Prevention (EA), School Violence Prevention (SV), and Workplace Violence Prevention (WV) series were revised to implement the provisions in Assembly Bill 1081 (Stats. 2015, ch. 411), which broadened and clarified the grounds for granting a continuance, excised the concept of "reissuance" of a protective order from the statutes, and clarified that a temporary restraining order (TRO) may be extended to a new hearing date without first having to be "dissolved by the court."

The council first adopted gun violence restraining order (GVRO) forms, including form GV-115 and form GV-116, effective July 1,2016. Effective January 1, 2019, the forms were revised to incorporate changes that were required by Senate Bill 1200 (Stats. 2018, ch. 898) to ensure that orders under Penal Code section 18100 et seq. be referred to as gun violence restraining orders and that the definition of *ammunition* include *magazine*, to prohibit a filing fee for GVRO forms and documents, to instruct a law enforcement officer to make a specific request when serving a gun violence restraining order, and to provide that parties do not need to pay the sheriff for service of a GVRO.

Analysis/Rationale

The committees began their work on this proposal to ensure that temporary restraining orders issued when a hearing is continued are properly entered into CLETS and to revise the DV and GV (Gun Violence Prevention) continuance forms to implement new laws. In addition, the committees looked for ways to simplify language and remove unnecessary items.

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) so that law enforcement in the field know whether a restraining order has been served for enforcement purposes. Item 9, Service of Order, in the current 116 forms does not state whether service is required when the restrained party is the person seeking a continuance or when the restrained party agrees to a continuance. The revised 116 forms include this language at items 6a(1). The committees also reorganized this item to make the service requirements easier to understand for the party responsible for service.

Additional revisions to forms in the DV and GV series are needed to implement new laws.[1]

Domestic violence restraining orders

Revised form DV-116, at item 6, includes a reference to new form DV-117, *Order Granting Alternative Service,* which the court will complete upon granting a request to serve by alternative means.[2] This addition is needed to implement Assembly Bill 2694 (Stats. 2018, ch. 219), which allows a petitioner seeking a domestic violence restraining order to ask the court for permission to serve by alternative means when personal service has been unsuccessful after diligent efforts and there is reason to believe that the restrained party is avoiding (evading) service. See Family Code section 6340(a)(2).

Gun violence restraining orders

Revised forms GV-115 and GV-116 allow a court to continue the hearing that is required to be set 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, including that law enforcement has not yet served the order. Forms GV-115 and GV-116 currently allow the court to continue a hearing set following the filing of a *Petition for Gun Violence Restraining Order* (form GV-100) and to extend the temporary restraining order, if one is in effect. The revised forms now also allow the court to continue a hearing set following issuance of an EPO-002 and to continue the EPO until the new hearing date.

The revisions to the language in what is now item 7 on form GV-116 clarify that, even though service by the sheriff or marshal is free, the litigant must provide the papers to the sheriff or marshal for service to occur (i.e., service by sheriff or marshal will not take place without action by the litigant).

The recommended revisions also include changes to the 115 and 116 forms to simplify the language and remove unnecessary items. These changes should make the forms easier to understand for all users, including self-represented litigants, judicial officers, and court staff. The principal changes are to:

---

[1] See Link A, Assem. Bill 2694 (Stats. 2018, ch. 219), and Link B, Sen. Bill 1200 (Stats. 2018, ch. 898)

[2] The proposal to adopt form DV-117 is in "Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases (August 14, 2019)." If approved, it would become effective at the same time as this proposal.

- Remove the contact information of the requesting party on the 116 order forms;[3]
- Remove the contact information for the protected party on the 115 forms because the protected party's information is already required on the request for restraining order forms (the "100" forms);
- Limit the listed reasons for continuance to those that are expressly authorized under the law,[4] as follows: (1) one continuance by the responding party (with no good cause required), (2) a continuance on request by either party on a showing of good cause, and (3) a continuance on the court's own motion;
- Include a separate signature block for the party and the party's lawyer, if they have one;
- Move to the first page of the 116 forms the items that state that the TRO or EPO in effect (if any) will remain in effect until the new date of the hearing;
- Have a field on the 116 forms to enter the deadline for service rather than a field to enter the number of days before the hearing by which the order must be served; and
- Provide a field on the 116 forms to enter an expiration date for the TRO rather than having the TRO automatically expire at the next hearing. This change was requested by courts. In response to a commenter expressing concern that adding a field could produce unnecessary errors, the committees have included default language that, if the field is left blank, the TRO will automatically expire at the end of the hearing.

Differences across form types

Although the committees work hard to ensure that the protective order forms use consistent language and design across case types, it is not always possible. For this proposal, the committees note that forms GV-115 and GV-116 are different from the other 115 and 116 forms in two ways. First, the GVRO statutes do not provide for the restrained person to request and obtain a first continuance automatically. Therefore, this option is not listed under item 3 of GV-115 and item 5 of form GV-116. Second, as noted above, a hearing for a gun violence protective order must be set for within 21 days of issuance of an EPO. (No such automatic hearing is set following issuance of a Domestic Violence EPO.) Because that hearing may need to be continued, revisions to forms GV-115 and GV-116 are needed so that these forms may be used for continuances of those hearings as well as hearings after the filing of a petition (form GV-100).

Also, as noted above, the DV forms differ from the others in referencing orders for alternative means of service, which the law does not allow for other types of restraining orders.

[3] The removal of the contact information also requires minor changes to the information sheets in each series, because parties will complete only the first two, rather than the first three, items on the revised 116 forms. For this reason, the information sheets (the 115-INFO forms) each require a minor revision to the instructions to the party seeking a continuance. Because these are technical changes, the forms did not need to circulate for comment.

[4] For CH, Code Civ. Proc., § 527.6(o) & (p); for DV, Fam. Code, § 245; for EA, Welf. & Inst. Code, § 15657.03(n); for GV, Pen. Code, § 18195; for SV, Code Civ. Proc., § 527.85(p); and for WV, Code of Civ. Proc., § 527.8(p).

Policy implications
There are no policy implications for this proposal.

Comments
Twelve commenters responded to this proposal, including 5 courts and judges from two other courts (the Superior Courts of Los Angeles, Orange, Riverside, San Diego, and Ventura Counties and judges from the Superior Courts of Alameda and Fresno Counties). Other commenters are the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees; a manager from the Department of Justice, Bureau of Firearms; the Director of the Domestic Violence Clinic, University of California, Irvine, School of Law; the Family Violence Law Center; and the Executive Committee of the Family Law Section of the California Lawyers Association.

Three commenters agree with the proposal, six agree if modified, and three did not indicate a position but suggested modifications. No commenter opposed the proposal. Most modifications proposed by commenters were incorporated.

The committees sought specific comments on four questions. After consideration of the comments received, the committees further modified the recommended forms as detailed below.

1. Should the forms include the contact information for the requesting party?
The committees had removed the contact information of the requesting party from the 116 forms circulated for comment. Commenters were split on whether this information should be included on the order form. After considering the comments received, the committees continue to recommend removing the item from the 116 forms, concluding that the benefits of excluding the information outweigh the benefits of including the information.[5] Any time a victim/survivor is asked to provide contact information, there is a risk that the victim/survivor will unintentionally disclose information meant to be private. Litigants often do not understand that court documents are available to the public and to the opposing side.

One commenter suggested including the restrained party's contact information in the event that the restrained party is the one seeking the continuance as an oral request and has not formally appeared in the case. The committees believe that capturing the restrained party's contact information is unlikely even in this scenario because a court is unlikely to have the restrained party prepare the order. This is because the order continuing the hearing would also include any TRO granted by the court. This order would need to be completed immediately after the hearing to ensure that the protected party has proof that a TRO remains in effect and that the order is reflected in CLETS. In this situation, the court, self-help center staff, or protected party would likely complete the order after hearing.

[5] For the same reason, the committees have modified the 115 forms to require only a restrained party to provide contact information. A party seeking protection will already have provided contact information to the court.

2. Should an additional item be added to the* Request to Continue Hearing *(115 forms) to ask whether the other party received notice of the request for continuance?
Some commenters believed that this information would be useful to know. One commenter thought that the question should not be added to the form because notice is not required by statute. After considering all the comments, committee members decided not to include this item, in part because currently no statute or rule states what notice would be required, if any. The committees will in the future, as time and resources permit, consider whether to propose rules of court to address notice requirements for continuances in restraining order proceedings.

3. 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?
All commenters who responded to this question indicated that law enforcement should have the ability to request a continuance for lack of service. The Civil and Small Claims Advisory Committee agrees and recommends modifying forms GV-115 and GV-116 to allow for the continuance of the required hearing following issuance of an EPO based on lack of service of the EPO.

4. Are the forms easy for users to understand? Do you have any suggestions for improving their usability or readability?
This question generated several suggestions to improve the usability and readability of the 115 and 116 forms. The committees responded by making several further changes to the circulated forms, including reorganizing the service of order item (item 6 in the 116 forms), using terms that are easier to understand (see chart below), and using the terms consistently throughout the forms.

Words in Current Forms	Words in Revised Forms
issued	*granted*
court hearing	*court date*
continue or change	*reschedule*

Other comments
In addition to responding to the specific comments requested, some commenters expressed concern over including a pending criminal case as one of the reasons for continuance. One commenter noted that asking for information on the criminal case may cause a party to unknowingly disclose information that could be used against the party. Another commenter strongly opposed the addition because it gives the impression that a continuance based on a pending criminal case is good cause when, in fact, appellate courts have stated that trial courts must undergo a balancing test in deciding whether to grant a continuance on this ground. Based on the comments received, the committees modified the proposed forms so that they do not list a "pending criminal case" as a reason for continuance on the 115 or 116 forms. Instead, the

committees noted that this reason can be listed under "Other" reason where good cause must be shown.

Commenters also asked the committees to revise the proposed forms or create new forms that could be used for continuing a request to *renew* restraining orders. After considering these comments, the committees agreed that forms for this purpose would be helpful but disagreed with the suggestions to modify these forms for such a purpose. The committees concluded that such forms would be more useful as part of the 700 series of forms (relating to requests to renew restraining orders) and will consider developing them in a future cycle.

Alternatives considered

115 and 116 forms

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.

The committees also considered changing the titles of forms 115 and 116 to use the terms "reschedule" and "court date" instead of "continuance" and "hearing." The committees rejected this alternative because they would like public comment on these changes. The committees will consider revising the titles of forms 115 and 116 in a future cycle.

Alternative service in domestic violence restraining order cases

To implement new laws allowing for alternative service in domestic violence restraining order cases, the Family and Juvenile Law Advisory Committee considered including itemizing specific methods for alternative service on the *Order on Request to Continue Hearing* (form DV-116), separately circulated that option for comments, but rejected that alternative. The committee agrees with the commenter that alternative service is applicable in a minority of cases and concluded that including the items would make the form confusing. Instead, the committee recommends the creation of a separate attachment (form DV-117) that can be used when alternative service is granted by the court. Form DV-117 is included in a separate proposal to implement AB 2694.

Fiscal and Operational Impacts

Several courts commenting on this proposal noted that it will result in some costs to incorporate revised forms into their paper or electronic processes and to train court staff. One court also noted that there may be some savings over time for court staff entering information into CLETS.

Attachments and Links

1. Forms CH-115, CH-115-INFO, CH-116, DV-115, DV-115-INFO, DV-116, EA-115, EA-115-INFO, EA-116, GV-115, GV-116, SV-115, SV-115-INFO, SV-116, WV-115, WV-115-INFO, and WV-116, at pages 9–43
2. Chart of comments, at pages 44–86

3. Link A: Assem. Bill 2694 (Stats. 2018, ch. 219), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2694*
4. Link B: Sen. Bill 1200 (Stats. 2018, ch. 898), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1200*

CH-115 Request to Continue Court Hearing

Clerk stamps date here when form is filed.

DRAFT

8/16/2019

Not approved by the Judicial Council

Instructions: Use this form to ask the court to reschedule the court date listed on *Notice of Court Hearing* (form **CH-109**). Read, *How to Ask for a New Hearing Date* (form **CH-115-INFO**), 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: _____

b. I am the:

(1) ☐ **Protected party** *(skip to 2)*.

(2) ☐ **Restrained party** *(give your contact information below)*.

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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 date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Is 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 court date is rescheduled, the *Temporary Restraining Order* (form CH-110) will remain in effect until the end of the new court date unless otherwise ordered by the court.

4 Why does the court date need to be rescheduled?

a. ☐ I am the person asking for protection, and 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 court date.

c. ☐ 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 your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

1 You may need to ask for a new court date if:

- You are the person asking for protection and are unable to have form CH-109, *Notice of Court Hearing*, and other papers served in time before the court date.
- You are the person to be restrained making your first request to reschedule your court date.
- You have a good reason for needing a new court date. (The court may grant your request to reschedule your court date on a showing of good cause.)

2 What does form CH-115 do?

Use form CH-115 to ask the court to reschedule your court date. If your court date is rescheduled and a *Temporary Restraining Order* (TRO; form CH-110) was granted, the TRO will be extended until the end of your new court date unless the court decides to modify or terminate it. "Extend" means to keep any temporary orders in effect until the new court date.

3 Follow these steps:

- Fill out all of form CH-115.
- Fill out items 1 and 2 on form CH-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge signed form CH-116, you will have a new court date. If the judge did NOT sign the form,you should go to court at the date, time, and location on form CH-109.
- Next, file both forms CH-115 and CH-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.
- The other party must be served a copy of the court papers as described in item 6 on form CH-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form CH-200, *Proof of Personal Service*. If service was by mail, use form POS-040, *Proof of Service—Civil*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.
- If the court reschedules your court date and extends the TRO to the new court date, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a filed proof of service form. "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the person seeking protection and you do not go to the court date, your TRO will expire at the end of your court date.
- If you are the person to be restrained and you do not go to your court date, the court can still make orders against you that can last for up to five years.

5 Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

CH-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 8/15/2019

Complete items (1) and (2) only.

(1) **Protected Party:** _____

(2) **Restrained Party:** _____

The court will complete the rest of this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Restraining Order* (form CH-110) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

_____

_____

_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(8) for more information.

New Court Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Temporary Restraining Order

a. ☐ **There is no *Temporary Restraining Order* (TRO) in this case.**

(1) ☐ The court did not grant a TRO.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

_____

_____

b. ☐ **A *Temporary Restraining Order* (TRO) is still in full force and effect.**

(1) ☐ The court extends the TRO previously granted on *(date)*: _____

It now expires on *(date)*: _____

(*If no date is listed, the TRO expires at the end of the court date listed in 3b.*)

(2) ☐ The court changes the TRO previously granted and signs a new TRO (form CH-110).

Warning and Notice to the Restrained Party:
If (4) b is checked, a civil harassment restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The protected party has not served the restrained party.
   (2) ☐ Other: _____

b. ☐ This is the first time that the restrained party has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of this order and a copy of all documents listed on form CH-109, item 6, by *(date):* _____

(3) ☐ You must serve the restrained party with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other _____

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the protected party personally served with a copy of this order by *(date):* _____

(3) ☐ You must serve the protected party with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other _____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):* _____

(3) ☐ Other _____

☐ See Attachment 6 for more information.

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 for free 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.

8.12.19
Not approved by Judicial Council

Instructions: Use this form to ask the court to reschedule the court date listed on form **DV-109**, *Notice of Court Hearing*. Read form **DV-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: _____

b. I am the:

(1) ☐ **Protected party** *(skip to 2)*.

(2) ☐ **Restrained party** *(give your contact information below)*.

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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 date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Is 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 your court date is rescheduled, the *Temporary Restraining Order* (**form DV-110**) will remain in effect until the end of the new court date, unless otherwise ordered by the court.

4 Why does your court date need to be rescheduled?

a. ☐ I am the person asking for protection, and 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 court date.

c. ☐ 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 your name *Sign your name*

Date: _____

_____ ▶ _____

Lawyer's name, if you have one *Lawyer's signature*

DV-115-INFO How to Ask for a New Hearing Date

DRAFT - not approved by the Judicial Council

1 You may need to ask for a new court date if:

- You are the **protected party** and are unable to have form DV-109, *Notice of Court Hearing*, and other papers served in time before your court date.
- You are the **restrained party** and it is your first time asking the court to reschedule your court date.
- You have a good reason for needing a new court date (the court may grant your request to reschedule your court date on a showing of "good cause").

2 What does form DV-115 do?

Use form DV-115 to ask the court to reschedule your court date. If your court date is rescheduled and a *Temporary Restraining Order* (form DV-110) was granted, that order will be extended until the end of your new court date, unless the court decides to modify or terminate it. "Extend" means to keep any temporary orders in effect until the new court date.

3 Follow these steps:

- Fill out all of form DV-115.
- Fill out items 1 through 2 on form DV-116, *Order on Request to Continue Hearing*.
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge signed form DV-116, you will have a new court date. If the judge did NOT sign the form, you should go to court at the date, time, and location that is on form DV-109.
- Next, file both forms DV-115 and DV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.

  The other party must be served a copy of the court papers as described in item 6 on form DV-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form DV-200, *Proof of Personal Service*. If service was by mail, use form DV-250, *Proof of Service by Mail*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.
- If the court reschedules your court date and extends the expiration date of the temporary restraining order to the end of your new court date, the clerk will send the restraining order to law enforcement or CLETS for you. CLETS is a statewide computer system that lets police know about the order.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a copy of the filed proof of service form.Your documents may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If the protected party does not go to the court date, the temporary domestic violence restraining orders will expire on the date and time of the court date. If the restrained party does not go to the court date, the court can still make orders against them that can last for up to five years.

5 Need help?

Ask the court clerk about free or low-cost legal help. For a referral to a local domestic violence or legal assistance program, 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-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT-POST-comment
August 2019
NOT APPROVED BY JUDICIAL COUNCIL

Complete items 1 and 2 only.

1 **Protected Party:** _____

2 **Restrained Party:** _____

The court will complete the rest of the this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

3 Next Court Date

a. ☐ The request to reschedule the court date is **denied**.
Your court date is: _____
(1) Any *Temporary Restraining Order* (form DV-110) already granted stays in full force and effect until the next court date.
(2) Your court date is not rescheduled because: _____
_____
_____
_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See 4–8 for more information.

New Court Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court, if different from above:
_____
_____
_____

4 Temporary Restraining Order

a. ☐ **There is no Temporary Restraining Order (TRO) in this case until the next court date** because:
(1) ☐ A TRO was not previously granted by the court.
(2) ☐ The court terminates (cancels) the previously granted TRO because: _____
_____
_____

b. ☐ **A Temporary Restraining Order (TRO) is in full force and effect** because:
(1) ☐ The court extends the TRO previously granted on *(date)*: _____
It now expires on *(date)*: _____
(If no expiration date is listed, the TRO expires at the end of the court date listed in 3b).
(2) ☐ The court changes the TRO previously granted and signs a new TRO (form DV-110).

Warning and Notice to the Restrained Party:
If 4b is checked, a domestic violence restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The protected party has not served the restrained party.
   (2) ☐ Other: _____

b. ☐ This is the first time that the restrained party has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ Protected party

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of this order and a copy of all documents listed on form DV-109, item 6 by *(date)*: _____

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ The court gives you permission to serve the restrained party as listed on the attached form DV-117.

(5) ☐ Other _____

b. ☐ Restrained party

(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the protected party personally served with a copy of this order by *(date)*: _____

(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____

c. ☐ Court

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____

(3) ☐ Other _____

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 and the court extended, modified, or terminated a temporary restraining order, then the court must 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) (form DV-116) 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 08/15/2019
NOTAPPROVED BY
JUDICIAL COUNCIL

Instructions: Use this form to ask the court to reschedule the court date listed on *Notice of Court Hearing* (form EA-109). Read *How to Ask for a New Hearing Date,* (form EA-115-INFO),for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Parties Information

a. My name is: _____

b. I am the *(check one of the boxes below)*:

(1) ☐ Protected party *(skip to 2)*.

(2) ☐ Person asking for protection for the protected party *(name of elder or dependent adult)*: _____ *(skip to 2)*.

(3) ☐ Restrained party (*give your contact information below*).

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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 date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

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 court date is rescheduled, the *Temporary Restraining Order* (form **EA-110**) will remain in effect until the end of the new court date, unless otherwise ordered by the court.

4 Why does the court date 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 court date.

c. ☐ 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 your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

EA-115-INFO How to Ask for a New Hearing Date

DRAFT - not approved by the Judicial Council

1 You may need to ask for a new court date if:

- You are the person seeking protection and are unable to have form EA-109, *Notice of Court Hearing*, and other papers served in time before your court date.
- You are the person to be restrained making your first request to reschedule your court date.
- You have a good reason for needing a new court date. (The court may grant your request to reschedule your court date on a showing of good cause.)

2 What does Form EA-115 do?

Use form EA -115 to ask the court to reschedule your court date. If your court date is rescheduled and a *Temporary Restraining Order* (TRO; form EA -110) was granted, the TRO will be extended until the end of your new court date unless the court decides to modify or terminate it."Extend" means to keep any temporary orders in effect until the new court date.

3 Follow these steps:

- Fill out all of form EA-115.
- Fill out items 1 to 2 on form EA-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge signed form EA-116, you will have a new court date. If the judge did NOT sign the form, you should go to court at the date, time, and location on form EA-109.
- Next, file both forms EA-115 and EA-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.
- The other party must be served a copy of the court papers as described in item 6 on form EA-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form EA-200, *Proof of Personal Service*. If service was by mail, use form POS-040, *Proof of Service—Civil*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.
- If the court reschedules your court date and extends the TRO to the new court date, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a filed proof of service form. "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the person seeking protection and you do not go to your court date, your TRO will expire on the date and time of your court date.
- If you are the person to be restrained and you do not go to the court date, the court can still make orders against you that can last for up to five years.

5 Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

EA-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT
8/16/19
NOT APPROVED BY JUDICIAL COUNCIL

Complete items (1) and (2) only.

(1) **Protected Party:** _____

(2) **Restrained Party:** _____

The court will complete the rest of the this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Restraining Order* (form EA-110) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

_____

_____

_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(8) for more information.

New Court Date → Date: _____ Time: _____ Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Temporary Restraining Order

a. ☐ **There is no *Temporary Restraining Order* (TRO) in this case.**

(1) ☐ The court did not grant a TRO.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

_____

_____

b. ☐ **A *Temporary Restraining Order* (TRO) is still in full force and effect.**

(1) ☐ The court extends the TRO previously granted on *(date)*: _____

It now expires on *(date)*: _____

(If no date is listed, the TRO expires at the end of the court date listed in 3b.)

(2) ☐ The court changes the TRO previously granted and signs a new TRO (form EA-110).

Warning and Notice to the Restrained Party:
If (4)b is checked, a domestic violence restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The protected party has not served the restrained party.
   (2) ☐ Other: _____

b. ☐ This is the first time that the restrained party has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of this order and a copy of all documents listed on form EA-109, item 5, by *(date)*: _____

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the protected party personally served with a copy of this order by *(date)*: _____

(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____

(3) ☐ Other _____

This is a Court Order.

Case Number:

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 and the court extended, modified or terminated a temporary restraining order, then the court must 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-TEA or TEF), form EA-116, 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 Court Hearing for Gun Violence Restraining Order

Clerk stamps date here when form is filed.

Draft 8/16/2019 NOT APPROVED BY JUDICIAL COUNCIL

Instructions: Use this form to ask the court to reschedule the court date listed on *Notice of Court Hearing* (form **GV-009**, **GV-109**, or **GV-110**) or *Gun Violence Emergency Protective Order* (form **EPO-002**).

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: _____

b. I am the:

(1) ☐ **Petitioner** (family member of respondent, law enforcement officer/law enforcement agency) *(skip to 2)*.

(2) ☐ **Respondent** *(give your contact information below)*.

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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 date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Why does the court date need to be rescheduled?

a. ☐ I could not get the papers served before the court date. I need more time to have the respondent personally served.

b. ☐ I am either the petitioner or the respondent. I request the the court reschedule the court date for these reasons:

_____

_____

_____

_____

_____

_____

_____

4 Is a Temporary Gun Violence Restraining Order or Gun Violence 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 court date is rescheduled, the *Temporary Gun Violence Restraining Order* (form **GV-110**) or *Gun Violence Emergency Protective Order* (form **EPO-002**) will remain in effect until the end of the new court date, 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 your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

GV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 8/16/2019

Complete items 1 and 2 only.

1 **Petitioner:** _____

2 **Respondent:** _____

The court will complete the rest of this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

3 Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Gun Violence Restraining Order* (form GV-110) or *Gun Violence Emergency Protective Order* (form EPO-002) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See 4–8 for more information.

Name and address of court, if different from above:

New Court Date → Date: _____ Time: _____ _____

Dept.: _____ Room: _____ _____

_____

4 Temporary Gun Violence Restraining Order or Gun Violence Emergency Protective Order

a. ☐ **There is no *Temporary Gun Violence Restraining Order* (TRO) in this case.**

(1) ☐ The court did not grant a TRO.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

_____

b. ☐ **A *Temporary Gun Violence Restraining Order* (form GV-110) is still in full force and effect.**

(1) ☐ The court extends the order previously granted on *(date)*: _____

It now expires on *(date)*: _____

(If no date is listed, the TRO expires at the end of the court date listed in 3b.)

c. ☐ **A *Gun Violence Emergency Protective Order* (form EPO-002) is still in full force and effect.**

(1) ☐ The court extends the order previously granted on *(date)*: _____

It now expires on *(date)*: _____

(If no date is listed, the TRO expires at the end of the court date listed in 3b.)

Warning and Notice to the Restrained Party: If 4b or c is checked, a gun violence restraining order has been issued against you. You must follow the orders until they expire.

d. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:

(1) ☐ The protected party has not served the restrained party.

(2) ☐ Other: _____

b. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner/Requesting Agency**

(1) ☐ You do not have to serve the respondent because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the respondent personally served with a copy of this order and a copy of all documents listed on form GV-109, item 5, by *(date):* _____

(3) ☐ You must serve the restrained party with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other _____

b. ☐ **Respondent/Restrained party**

(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the petitioner personally served with a copy of this order by *(date):* _____

(3) ☐ You must serve the petitioner with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other _____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):* _____

(3) ☐ Other _____

☐ See Attachment 6 for more information.

This is a Court Order.

Case Number:

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 date the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (EPO-002 or Temporary Restraining Order) (CLETS-EGV or CLETS-TGV)* 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 Court Hearing

Clerk stamps date here when form is filed.

DRAFT

8/16/2019

Not approved by the Judicial Council

Instructions: Use this form to ask the court to reschedule the court date listed on *Notice of Court Hearing* (form **SV-109**). Read *How to Ask for a New Hearing Date* (form **SV-115-INFO**), 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: _____

b. I am the:

(1) ☐ **Petitioner** (educational institution officer or employee) *(skip to* **2***)*.

(2) ☐ **Respondent** *(give your contact information below).*

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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)*: _____

This is not a Court Order.

Case Number:

3 Is 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 court date is rescheduled, the *Temporary Restraining Order* (**form SV-110**) will remain in effect until the end of the new court date, unless otherwise ordered by the court.

4 Why does the court date need to be rescheduled?

a. ☐ I need more time to have the respondent personally served.

b. ☐ I am the respondent, and this is my first request to reschedule the court date.

c. ☐ 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 your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

SV-115-INFO How to Ask for a New Hearing Date

DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL

1 You may need to ask for a new court date if:

- You are the petitioner and are unable to have form SV-109, *Notice of Court Hearing*, and other papers served in time before your court date.
- You are the respondent making your first request to reschedule your court date.
- You have a good reason for needing a new court date. (The court may grant your request to reschedule your court date on a showing of good cause.)

2 What does form SV-115 do?

Use Form SV -115 to ask the court to reschedule your court date. If your court date is rescheduled and a *Temporary Restraining Order* (TRO; form SV -110) was granted, the TRO will be extended until the end of your new court date unless the court decides to modify or terminate it. "Extend" means to keep any temporary orders in effect until the new court date.

3 Follow these steps:

- Fill out all of form SV-115.
- Fill out items 1 through 2 on form SV-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge signed form SV-116, the court will give you a new court date. If the judge did NOT sign the form, you should go to court at the date, time, and location that is on form SV-109.
- Next, file both forms SV-115 and SV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.
- The other party must be served with a copy of the court papers as described in item 6 on form SV-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form SV-200, *Proof of Personal Service*. If service was by mail, use Form POS-040, *Proof of Service—Civil*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.
- If the court reschedules your court date and extends the TRO to the new court date, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a filed proof of service form. "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the petitioner and you do not go to your court date, the TRO will expire at the end of your new court date.
- If you are the respondent and you do not go to your court date, the court can still make orders against you that can last for up to three years.

5 Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

SV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 8/16/2019

Complete items (1) and (2) only.

(1) **Petitioner (Educational Institution Officer or Employee):** _____

(2) **Respondent:** _____

The court will complete the rest of this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Restraining Order* (form SV-110) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(8) for more information.

New Court Date → Date: _____ Time: _____ Dept.: _____ Room: _____

Name and address of court, if different from above: _____

(4) Temporary Restraining Order

a. ☐ **There is no *Temporary Restraining Order* (TRO) in this case.**

(1) ☐ The court did not grant a TRO.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

b. ☐ **A *Temporary Restraining Order* (TRO) is still in full force and effect.**

(1) ☐ The court extends the TRO previously granted on *(date)*: _____

It now expires on *(date)*: _____

(If no date is listed, the TRO expires at the end of the court date listed in 3b.)

(2) ☐ The court changes the TRO previously granted and signs a new TRO (form SV-110).

Warning and Notice to the Restrained Party:
If (4) b is checked, a temporary restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The petitioner has not served the respondent.
   (2) ☐ Other: _____
   _____
   _____

b. ☐ This is the first time that the respondent has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner**

(1) ☐ You do not have to serve the respondent because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the respondent personally served with a copy of this order and a copy of all documents listed on form SV-109, item 6, by *(date)*: _____

(3) ☐ You must serve the respondent with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____
_____
_____

b. ☐ **Respondent**

(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the petitioner personally served with a copy of this order by *(date)*: _____

(3) ☐ You must serve the petitioner with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____
_____
_____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____

(3) ☐ Other _____
_____
_____
_____

☐ See Attachment 6 for more information.

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 for free 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

08/16/2019

Not approved by the Judicial Council

Instructions: Use this form to ask the court to reschedule the court date listed on, *Notice of Court Hearing* (form WV-109). Read How to Ask for a New Hearing Date (form WV-115-INFO) 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: _____

b. I am the:

(1) ☐ **Petitioner** (employer) *(skip to 2)*.

(2) ☐ **Respondent** *(give your contact information below)*.

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: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

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)*: _____

This is not a Court Order.

3 Is 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 court date is rescheduled, the *Temporary Restraining Order* (**form WV-110**) will remain in effect until the end of the new court date unless otherwise ordered by the court.

4 Why does the court date need to be rescheduled?

a. ☐ I need more time to have the respondent personally served.

b. ☐ I am the respondent, and this is my first request to reschedule the court date.

c. ☐ 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 your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

WV-115-INFO How to Ask for a New Hearing Date

DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL

1 You may need to ask for a new court date if:

- You are the petitioner and are unable to have form WV-109, *Notice of Court Hearing*, and other papers served in time before your court date.
- You are the respondent making your first request to reschedule your court date.
- You have a good reason for needing a new court date. (The court may grant a request to reschedule your court date on a showing of good cause.)

2 What does form WV-115 do?

Use form WV-115 to ask the court to reschedule your court date. If your court date is rescheduled and a *Temporary Restraining Order* (TRO; form WV-110) was granted, the TRO will be extended until the end of your new court date unless the court decides to modify or terminate it. "Extend" means to keep any temporary orders in effect until the new court date.

3 Follow these steps:

- Fill out all of form WV-115.
- Fill out items 1 through 2 on form WV-116, *Order on Request to Continue Hearing*.
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge signed form WV-116, the court will give you a new court date. If the judge did NOT sign the form, you should go to court at the date, time, and location on form WV-109.
- Next, file both forms WV-115 and WV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.
- The other party must be served a copy of the court papers as described in item 6 on form WV-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form WV-200, *Proof of Personal Service*. If service was by mail, use form POS-040, *Proof of Service—Civil*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.
- If the court reschedules your court date and extends the TRO to the end of your new court date, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a filed proof of service form. "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the petitioner and you do not go to your court date, the TRO will expire at the end of your court date.
- If you are the respondent and you do not go to your court date, the court can still make orders against you that can last for up to three years.

5 Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

WV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT 8/16/2019

Complete items 1 and 2 only.

1 **Petitioner (Employer):** _____

2 **Respondent:** _____

The court will complete the rest of this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

3 Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Restraining Order* (form WV-110) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

_____

_____

_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See 4–8 for more information.

New Court Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

4 Temporary Restraining Order

a. ☐ **There is no *Temporary Restraining Order* (TRO) in this case.**

(1) ☐ The court did not grant a TRO.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

_____

_____

b. ☐ **A *Temporary Restraining Order* (TRO) is still in full force and effect.**

(1) ☐ The court extends the TRO previously granted on *(date)*: _____

It now expires on *(date)*: _____

(If no date is listed, the TRO expires at the end of the court date listed in 3b.)

(2) ☐ The court changes the TRO previously granted and signs a new TRO (form WV-110).

Warning and Notice to the Respondent:
If 4 b is checked, a temporary restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The petitioner has not served the respondent.
   (2) ☐ Other: _____
   _____
   _____

b. ☐ This is the first time that the respondent has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner (Employer)**

(1) ☐ You do not have to serve the respondent because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the respondent personally served with a copy of this order and a copy of all documents listed on form WV-109, item 6 , by *(date)*: _____

(3) ☐ You must serve the respondent with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____
_____
_____

b. ☐ **Respondent**

(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the petitioner personally served with a copy of this order by *(date)*: _____

(3) ☐ You must serve the petitioner with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other _____
_____
_____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____

(3) ☐ Other _____
_____
_____
_____

☐ See Attachment 6 for more information.

This is a Court Order.

Case Number:

7 ☐ Other Orders

_____

_____

_____

_____

8 No Fee to Serve (Notify) Respondent ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free 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.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
1.	California Lawyers Association, Executive Committee of the Family Law Section By Saul Bercovitch, Director of Governmental Affairs California Lawyers Association	A	In response to the request for specific comments, FLEXCOM believes the forms should include the address of the requesting party and believes the forms should have a box indicating whether the other party has received notice of the request for continuance. These comments are specific to forms DV-115 and DV-116.	For the order forms (116 in each series) the committees believe that the benefits of omitting the requester's contact information outweigh any potential benefit. The protected person's information will already be on file and the restrained person's contact information will be on file upon submission of any other filing. The committees have decided that the form should not include an item that queries whether notice has been provided to the other party at this time. The committees will consider whether a Rule of Court or other change should be made in the future to ensure that these requests are made with adequate notice as either side is entitled to make a request for continuance.
2.	Dosch, Jacqueline Staff Services Manager I Legislation, Regulations and Public Records Act Unit Bureau of Firearms	NI	The Department of Justice, Bureau of Firearms recommends you include a question regarding firearm ownership and then request information regarding firearms owned (such as serial number, make, model, etc.) The below Basic Firearm Eligibility Check (BFEC) is an example of a GVRO that hit as a potential triggering event (PTE) in the Armed Prohibited Persons System.* In the miscellaneous field (highlighted) the analyst entering the order included firearm information, which does not always occur with protective orders. The analyst likely used the firearm information section available in the GV-100 form (attached, page 2) to initiate the GVRO. It	This is outside of the scope of this proposal, but this will be considered by the Civil and Small Claims Advisory Committee in the next forms cycle. Staff has discussed this comment with the commenter.

	Commenter	Position	Comment	Committee Responses
			would be nice if all of the forms that initiate orders also included this information. But as it relates to the "Continue Hearing" forms in the attachment you provided, if there were also a section indicating the firearms including make/serial number/etc. and if they were seized/sold/transferred in order to have it identified as highlighted below that would also be beneficial for the Armed Prohibited Persons System unit, the BOF Enforcement team, and other LEAs so that a phone call could be made to verify by a CIS I (for example) versus sending agent or LEO. *(The form contents have been omitted but will be shared with the committee if the committee takes this on a proposal for a future rule cycle)	
3.	Family Violence Law Center By Cory Hernandez Staff Attorney	AM	Regarding the list of proposed changes found in dot-list format on page 3 of the Invitation to Comment document (beginning with "Remove item 3 . . . ."), we are generally in favor of all those proposed changes, although we have some disagreement with the proposed changes to the forms themselves. 1. Regarding whether to remove the information of "Party Seeking Continuance" (item 3) from DV-115, we agree removing that information is fine, because it is unnecessary to know that on the DV-116; if someone wants to know that information, they can look to the DV-115; but also, the judge may very well write who sought	1. The committees agree, and the 116 form will not contain the requester's contact information from the order form (116).

	Commenter	Position	Comment	Committee Responses
			the continuance, when explaining why they are or are not granting the continuance. 2. On page 4 of the Invitation to Comment document, it states a recommendation for the DV-115, to "Mov[e] the lawyer's information to the last item under 'My Information[.]' " If this is done for this form, this should be done for all DV forms (e.g., DV-100, 109, etc.). Basically, we want consistency between forms. 3. On this same page of the Invitation to Comment, it states a recommendation: "Giving examples of mailing addresses that could be used . . . ." This seems fine, but also there should be a box that can be checked to note the petitioner wants to keep their address confidential pursuant to Family Code section 6225; and actually, this box should really be added to all DV forms that ask for the petitioner's address. 4. This same page also states: "Providing space for the person . . . ." We note this space already exists on the DV-115.	2. The committees agree but cannot make those changes during this forms cycle. This revision will be proposed for other forms in the future. 3. The committees agree with the commenter's concern and have modified item 1 in the request forms (115 in each series) so that the contact information will only be completed if the requesting party is the restrained party. There is no need for the protected party to provide their contact information again because they would have already done so on form DV-100. This revision should address the commenter's concern for this form. As for the suggestion to include a checkbox to allow the petitioner (protected party) to note a confidential address pursuant to Family Code section 6225 on the forms, the committees will consider this request in a future cycle. 4. The committees agree that space does exist for showing good cause; similar space will be available on the revised forms.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			5. This same page also asks: "The committees are seeking comment about whether to include an additional item that queries whether notice has been provided to the other party." We think not. If it's relevant to the request, the person making the request will indicate in there whether or not the other party has been served with the request. And in ruling on the request, the judge also has to make an order as to how and when the DV-116 must be served on the respondent, anyway, so it seems unnecessary to add to DV-115. Plus, notice is not required before making a request under DV-115, and we don't think the Judicial Council should add more requirements to the forms than are necessary to effectuate the statutory authority granted under the DVPA. If, however, the committee moves forward with this language, we would also recommend include 2 additional checkboxes along the following lines: 1. "Yes, we both have agreed to the continuance, as set forth in the attached declaration signed by both parties under penalty of perjury." 2. "No, I have not yet had the respondent personally served with my petition, notice of hearing, or temporary restraining order, and I need more time to get the respondent served."	5. The committees agree that the revised forms should not include an item that queries whether notice has been provided to the other party at this time. The committees will consider whether a rule of court or other provision should be developed in the future to ensure that these requests are made with notice.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			6. On page 5 of the Invitation to Comment, it states 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." We think yes. Most, if not all, law enforcement agencies in Alameda County refuse to even issue an EPO unless the respondent/defendant/abuser can be located for personal service, even though they can issue the EPO and try to serve later or serve verbally over the phone. Allowing law enforcement to request continuances of EPOs may help nudge them in the right direction of issuing more EPOs, even if they cannot immediately personally serve the respondent.	6. The committee agrees that a hearing set on the issuance of an EPO may be continued and the proposed forms will allow for this possibility.
			7. Now to the draft forms themselves. First the CH-115. As mentioned above, the items 1 and 2 on the forms, CH-115, DV-115, etc., should be consistent across the CHO, DV, and other forms.	7. The committees agree that consistency is the goal but cannot make changes to other forms not included in this proposal without first circulating them for comment. This revision will be proposed in a future rule cycle depending on time and resources.
			8. We are STRONGLY OPPOSED to adding (c) to item 4 on this form. There is no need to add "I have a pending criminal case that is based on the same allegations in this case." Nowhere in the CCP section 527.6, nor the CCP more generally, does it state a court should continue a hearing because of a pending criminal case. Nor does it say that anywhere in the CRC (rule 3.1332) that	8. The committees agree and have deleted the item regarding pending criminal case being a basis for a continuance. The forms have been revised so this item reflects only the three scenarios expressly provided in the statutes under which a continuance may be granted: (1) on a showing of good cause; (2) a first

	Commenter	Position	Comment	Committee Responses
			deal with what is "good cause" for granting a continuance. If this is added, courts will routinely—even more so than they are now—be trailing civil cases because of pending criminal cases. However, this is not what is supposed to happen when there is a simultaneous criminal case and civil case. Indeed, Gov. Code section 68607, subd. (g) states trial courts must "[a]dopt and utilize a firm, consistent policy against continuances." (See also County of San Bernardino v. Doria Mining & Engineering Corp. (1977) 72 Cal.App.3d 776, 781.) Rather, if a respondent wants to continue a case because of a pending criminal case, it is the respondent's burden to make the request and then the court must have a hearing on the request to go through a multi-factor test to determine whether the respondent's fears are well-founded and warrant a continuance, and if so, for how long. (See Fisher v. Gibson (2001) 90 Cal.App.4th 275, 285; In re Marriage of Sachs (2002) 95 Cal.App.4th 1144, 1155-1156; People v. Coleman (1970) 13 Cal.3d 867, 885; Federal Savings & Loan Ins. Corp. v. Molinaro (9th Cir. 1989) 889 F.2d 899, 902; Fuller v. Superior Court (2001) 87 Cal.App.4th 299, 305-306; Oiye v. Fox (2011) 211 Cal.App.4th 1036, 1055; Keating v. Office of Thrift Supervision (9th Cir. 1995) 45 F.3d 322, 326; Avant! Corp. v. Superior Court (2000) 79 Cal.App.4th 876, 885; People v. Engram (2010) 50 Cal.4th 1131, 1146; IBM Corp. v. Brown (C.D. Cal. 1994) 857 F.Supp. 1384, 139.) After all, CHO proceedings	request by respondent to allow for more time to prepare; and (3) on the courts own motion.

	Commenter	Position	Comment	Committee Responses
			are meant to be expedited for the benefit of all parties, including especially the petitioner. (See Russell v. Douvan (2003) 112 Cal.App.4th 399, 403; Grant v. Clampitt (1997) 56 Cal.App.4th 586, 592.) Adding any language related to a pending criminal case, to these continuance forms, would seriously undermine the trial court's requirement to have a special hearing to go through the multiple-factor test, and instead, if adopted, the language would likely motivate many, if not most, courts to skip over that hearing and test and instead just rule on the request without a hearing, simply because the form allows them to do so. We have heard from multiple judges that they give great weight to whatever is stated in a JC form and how the JC interprets the law, and we don't think it's appropriate for the JC to basically state its position that trailing a criminal case is almost always "good cause" for granting a continuance in a restraining order proceeding. 9. If the committee, notwithstanding our strong objections to this, decides to keep this, we would recommend including additional language stating in no uncertain terms that this request still (1) requires a hearing, (2) is not guaranteed to be granted just because there is a pending criminal case, and (3) is always up to the discretion of the court as to whether this constitutes "good cause" in this case.	9. The committees agree and have modified the item. 10. Thank you for the comment.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			10. In reality, we think the items given for the reasons for the continuance request, on the CH-115, are already fine as is. It is unnecessary to list items c and d ("I need more time to hire a lawyer . . . .") because there simply needs to be items a and b (as already listed there) plus a third option to provide any additional explanation of "good cause." The statute allows for one continuance for the respondent, at the respondent's first request, and thereafter it always comes down to "good cause." This needs to be decided on a case-by-case basis, and not by some reasons given by the Judicial Council, even if the Council believes those are more likely to be given by certain judges or courts, or requested by certain parties.	
			11. We think the CH-115 (and similar DV-115, etc.) should have an additional item (item 5 or so) that allows both parties (or their attorneys) to stipulate to a continuance ahead of time. This is particularly useful for when the parties are seeking a potential settlement/agreement, or when both cannot make a certain date, or something.	11. The committees note that a stipulation could be noted in item 4c "other reason." Additional revisions would be needed to allow DV-115 to be used as a written agreement, including a signature line for the opposing party. Such a modification would need to be circulated for public comment before the committees could make a recommendation. The committees will consider this suggestion in a future cycle.
			12. CH-116. Item 3(a)(1) should be amended to read (emphasis added to suggested edits/revisions): "Any Temporary Restraining Order (form CH-110) previously issued remains in full force and effect until the hearing."	12. The committees have simplified the language in this section to make it more easily understandable to self-represented litigants to state, "Any *Temporary Restraining Order* (CH-110) already granted stays in full force and effect until the next court date."

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			13. . The "New Hearing Date" information under item 3(b) should be placed in a box, like on the CH-109.	13. The committees thank the commenter for the suggestion. The purpose of the box on forms 109 is to draw attention to the date of the hearing. The committees believe that removing the box in 116 makes the form cleaner (more white space) and so easier to read, while still drawing attention to the information for the next court hearing by bolding the text and placing a box around the words, "New Court Date."
			14. Item 4(c) should have a place for the date to note when they modified the TRO. Our suggestion would be amending the second sentence to read (emphasis added to suggested edits/revisions): "The court signed a new Temporary Restraining Order (form CH-110) on (date): [blank space]."	14. In this same section, the court will have to fill-in the expiration date of the newly modified TRO. The committees believe the expiration date is sufficient to identify the modified TRO.
			15. Item 5 should remove item (c) for the reasons outlined above. And should combine (e) and (f), because as it is is basically redundant. Except for the first continuance granted to the respondent as a matter of right under the law, every one thereafter is always premised on "good cause," so it's unnecessary to spell that out in (e).	15. The committees have revised this item to reflect the three scenarios in which a continuance may be granted: (1) on a showing of good cause; (2) first request by respondent to allow for more time to prepare; and (3) on the courts own motion. The committees note that the court may continue a hearing on its own motion without a showing of good cause (see Family Code section 245 and Code of Civ. Proc. section 527.6(p)(1).

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			16. Item 6(a) should read, in the first sentence, "Restrained party or their attorney was at the court hearing." (Emphasis added to suggested edits/revisions.)	16. The committees have reorganized this item to make it more understandable. The modified items include this suggested revision (see items 6(a)(1) and (a)(2)) except did not add emphasis to the text (did not italicize).
			17. Item 6(c)(2) changes things to require the court to set the deadline for service, instead of just stating the service must be done no less than 5 days before the hearing, or something. We like this change.	17. The committees appreciate the comment. Service requirements are often hard for self-represented litigants to understand. Making the deadline clear should help increase understanding and compliance with service requirements. The specific deadline has been retained in the reorganized item 6.
			18. Item 6 should include a box that allows the Court to order service of the CH-116 to be by mail. Courts allow this when the petition, notice, and TRO have already been personally served on the other party, so there's no need to have the reissuance/continuance served personally again, and mail is sufficient.	18. The committees have included service by mail as an option in the reorganized item 6.
			19. DV-115. As noted above, for item 1(b) there should be a box allowing the petitioner to note they are keeping their address confidential. (Fam. Code, § 6225.)	19. See response provided in response #3 above.
			20. As noted above, item 4 should not include "I have a pending criminal case that is based on the same allegations in this case." We are STRONGLY	20. The committees agree and have removed this part of item 4.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			OPPOSED to adding (c) to item 4 on this form. There is no need to add "I have a pending criminal case that is based on the same allegations in this case." Nowhere in the DVPA (Fam. Code, § 6200 et seq.), or the Family Code or CCP more generally, does it state a court should continue a hearing because of a pending criminal case. Nor does it say that anywhere in the CRC (rule 3.1332) that deal with what is "good cause" for granting a continuance. If this is added, courts will routinely—even more so than they are now—be trailing civil cases because of pending criminal cases. However, this is not what is supposed to happen when there is a simultaneous criminal case and civil case. Indeed, Gov. Code section 68607, subd. (g) states trial courts must "[a]dopt and utilize a firm, consistent policy against continuances." (See also County of San Bernardino v. Doria Mining & Engineering Corp. (1977) 72 Cal.App.3d 776, 781.) Rather, if a respondent wants to continue a case because of a pending criminal case, it is the respondent's burden to make the request and then the court must have a hearing on the request to go through a multi-factor test to determine whether the respondent's fears are well-founded and warrant a continuance, and if so, for how long. (See Fisher v. Gibson (2001) 90 Cal.App.4th 275, 285; In re Marriage of Sachs (2002) 95 Cal.App.4th 1144, 1155-1156; People v. Coleman (1970) 13 Cal.3d 867, 885; Federal Savings & Loan Ins. Corp. v. Molinaro (9th Cir. 1989) 889 F.2d 899, 902; Fuller v. Superior Court (2001) 87 Cal.App.4th 299, 305-306; Oiye v. Fox (2011) 211 Cal.App.4th 1036, 1055; Keating v.	

	Commenter	Position	Comment	Committee Responses
			Office of Thrift Supervision (9th Cir. 1995) 45 F.3d 322, 326; Avant! Corp. v. Superior Court (2000) 79 Cal.App.4th 876, 885; People v. Engram (2010) 50 Cal.4th 1131, 1146; IBM Corp. v. Brown (C.D. Cal. 1994) 857 F.Supp. 1384, 139.) After all, DVPA proceedings are meant to be expedited for the benefit of all parties, including especially the petitioner. (See In re Marriage of Nadkarni (2009) 173 Cal.App.4th 1483, 1494-1500; Quintana v. Guijosa (2003) 107 Cal.App.4th 1077, 1079-1080; De La Luz Perez v. Torres-Hernandez (2016) 1 Cal.App.5th 389, 401-403 (conc. opn. of Streeter, J.); Monterroso v. Moran (2006) 135 Cal.App.4th 732, 738; Gonzalez v. Munoz (2007) 156 Cal.App.4th 413, 423.) Adding any language related to a pending criminal case, to these continuance forms, would seriously undermine the trial court's requirement to have a special hearing to go through the multiple-factor test, and instead, if adopted, the language would likely motivate many, if not most, courts to skip over that hearing and test and instead just rule on the request without a hearing, simply because the form allows them to do so. We have heard from multiple judges that they give great weight to whatever is stated in a JC form and how the JC interprets the law, and we don't think it's appropriate for the JC to basically state its position that trailing a criminal case is almost always "good cause" for granting a continuance in a restraining order proceeding. If the committee, notwithstanding our strong objections to this, decides to keep this, we would	

	Commenter	Position	Comment	Committee Responses
			recommend including additional language stating in no uncertain terms that this request still (1) requires a hearing, (2) is not guaranteed to be granted just because there is a pending criminal case, and (3) is always up to the discretion of the court as to whether this constitutes "good cause" in this case. In reality, we think the items given for the reasons for the continuance request, on the DV-115, are already fine as is. It is unnecessary to list items c and d ("I need more time to hire a lawyer . . . .") because there simply needs to be items a and b (as already listed there) plus a third option to provide any additional explanation of "good cause." The statute allows for one continuance for the respondent, at the respondent's first request, and thereafter it always comes down to "good cause." This needs to be decided on a case-by-case basis, and not by some reasons given by the Judicial Council, even if the Council believes those are more likely to be given by certain judges or courts, or requested by certain parties. 21. We think the DV-115 should have an additional item (item 5 or so) that allows both parties (or their attorneys) to stipulate to a continuance ahead of time. This is particularly useful for when the parties are seeking a potential settlement/agreement, or when both cannot make a certain date, or something.	21. The committees note that a stipulation could be noted in item 4c"other reason." Additional revisions would be needed to allow DV-115 to be used as a written agreement, including a signature line for the opposing party. Such a modification would need to be circulated for public comment before the committees could make a recommendation. The committees will consider this suggestion in a future cycle. 22. The committees have removed this reason from item 4. If parties want, this reason could

	Commenter	Position	Comment	Committee Responses
			22. Suggested additional item (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.") should be removed; we feel strongly about this. This is because the court already will have set out the custody/visitation review hearing far enough to allow the party to go to mediation. If for some reason the party does not within the allotted time, then the party needs to go back to court to talk with the judge about that, along with the other parent. The judge needs to hear from that parent to see why they didn't go through the mediation appointment. Is it because the parent couldn't get in touch with the mediator? Is it because the parent ignored their calls and letters? Is it because of a language barrier? Is it because the parent refuses to attend mediation altogether? This information is best gathered at a live hearing, and allows the other parent to state their case as well, in case they have evidence the other parent (who missed mediation) is simply trying to "play games" and avoid mediation for as long as possible, for whatever reason. Then the court may be able to set the parents for same-day mediation, or get the parent scheduled for mediation while they are still at the court hearing, before setting another review hearing. Keeping the status quo may cause negligible delays or more time for the courts, but ultimately we have seen enough cases where one parent—often the abusive parent—refuses to go to mediation, and the judge needs to know about that—and hear from the other parent as well—before deciding how to best move forward, whether that is making	be listed in item 4c as "other reason" on form DV-115.

	Commenter	Position	Comment	Committee Responses
			custody/visitation orders without visitation to the non-cooperative parent, until/unless they go to mediation, or setting another hearing, or admonishing that parent from the bench about the need/importance of mediation, or something else. Ultimately, though, the DV-115 and DV-116 forms are about reissuing a TRO and continuing the DVPA hearing to rule on the ROAH. Custody/visitation may be a part of the case, but they are ancillary issues; the DVRO hearing must be heard as soon as possible, under the law, and should not depend on mediation. Whatever happens at the DVRO hearing—whether the ROAH is granted or not—will impact custody/visitation, but not vice versa. Thus, a DVRO hearing should not be delayed just because one parent has not gone to mediation. DV-116. 23. Item 3(a)(1) should be amended to read (emphasis added to suggested edits/revisions): "Any Temporary Restraining Order (form DV-110) previously issued remains in full force and effect until the hearing." 24. The "New Hearing Date" information under item 3(b) should be placed in a box, like on the DV-109.	23. The committees have made this change the committees propose to use "granted" instead of "issued" and "court date" instead of hearing. 24. The committees appreciate the comment. The purpose of the box on form DV-109 and other council forms is to draw attention to the information on when the hearing is. The committees believe that removing the box in 116 makes the form cleaner (more white space), and so easier to understand, while still prioritizing the information for the next court

	Commenter	Position	Comment	Committee Responses
				hearing by bolding the text and placing a box around the words, "New Court Date."
			25. Item 4(c) should have a place for the date to note when they modified the TRO. Our suggestion would be amending the second sentence to read (emphasis added to suggested edits/revisions): "The court signed a new Temporary Restraining Order (form CH-110) on (date): [blank space]."	25. The committees have changed this section to read: The court changes the TRO previously granted and signs a new TRO (form CH-110).
			26. Item 5 should remove item (c) for the reasons outlined above. And should combine (e) and (f), because as it is is basically redundant. Except for the first continuance granted to the respondent as a matter of right under the law, every one thereafter is always premised on "good cause," so it's unnecessary to spell that out in (e).	26. The committees have revised this item to reflect the three scenarios in which a continuance may be granted: (1) on a showing of good cause; (2) first request by respondent to allow for more time to prepare; and (3) on the courts own motion. The committees note that the court may continue a hearing on its own motion without a showing of good cause (see Family Code section 245 and Code of Civ. Proc. section 527.6(p)(1).
			27. Item 6(a) should read, in the first sentence, "Restrained party or their attorney was at the court hearing." (Emphasis added to suggested edits/revisions.)	27. The committees have included appearance by the party's attorney as a reason why service would not be required on that party in the newly reorganized item 6.
			28. Item 6(c)(2) changes things to require the court to set the deadline for service, instead of just stating the service must be done no less than 5 days before the hearing, or something. We like this change.	28. The committees appreciate the comment. Service requirements are often hard for self-represented litigants to understand. Making the deadline clear should help increase understanding and compliance with service

	Commenter	Position	Comment	Committee Responses
				requirements, and it has been retained in the reorganized item.
			29. Item 6 should include a box that allows the Court to order service of the CH-116 to be by mail. Courts allow this when the petition, notice, and TRO have already been personally served on the other party, so there's no need to have the reissuance/continuance served personally again, and mail is sufficient. This is separate and distinct from the item (e) added to the form, regarding "substituted service," and item (f) regarding service by publication or posting.	29. The committees have included service by mail as an option in item 6.
			30. We would also like to extend our comments above, as appropriate, to the other forms, in the EA, GV, SV, and WV series.	30. Consistency across protective order form types helps service providers and the courts. The committees recommend making the same changes noted above for the other form types unless the change would be inconsistent with the law.
4.	Guerra, Amy K. (Hon.) Judge (Family Court) Superior Court of California, County of Fresno	AM	1. Under 1(b) - I believe the current language on form DV-115 better explains the option not to include specific contact information. The current language on the form is more succinct then the proposed language and notifies the party specifically that they do not have to include their phone number or e-mail (vs. the proposed language which just indicates the information is "optional"). Given the volatile nature of domestic violence cases, and specifically DVRO hearings, I think it's better to err on the side of caution and keep the language	1. The committee appreciates the comment. Since the petitioner (protected party) will already have their contact information on file, the committees have restructured this item so that only the restrained party would provide their contact information on form because the petitioner will already have provided contact information to the court.

	Commenter	Position	Comment	Committee Responses
			clear and concise as to the obligation to disclose additional contact information. 2. Under 4(c)-- my only concern is that, prior to asking parties additional details about any open criminal cases as part of a hearing, they are specifically advised of their rights under the 5th amendment. If the committee is inclined to have a party provide information about an open criminal case, it may be best to make it a close-ended inquiry rather than asking for them to give "any information they have" as to the requested topics. For example: Arrest date: _____ Next court date: _____ Case No: _____ Requesting information of this nature/manner shouldn't present a 5th amendment issue, but I do have some concerns that the inquiry on the proposed form is too broad as to open criminal charges. 3. Under 6(a)-(g): The language is a bit convoluted, understanding that most of it is for the court/clerk's purposes (rather than the public's). Not sure how feasible/realistic it is, but perhaps the language relating to substitute service could be separated on a separate form/page if and when it is authorized. I recognize that the suggestion may result in additional paperwork and/or forms, but substitute service is still a rare occasion and the	2. The committees have removed this sub-item from the request and order. If the court finds that there is good cause to grant a continuance based on a pending criminal case, this may be listed under "other" good cause on the order form (116). 3. The committees agree and have made revisions that should make service requirements clearer to the person responsible for service. Information regarding substituted service, if appropriate, will be provided on form DV-117. (See item 6a(4) on proposed DV-116.)

	Commenter	Position	Comment	Committee Responses
			vast majority of cases are still likely to involve personal service. If it is separated, perhaps it could include a portion or potential entry for why the court is authorizing it in lieu of personal service.	
5.	Rodriguez, Victor (Hon.) Judge Superior Court of California, County of Alameda Hayward, California	A	I think the proposed changes will be very helpful. I have two comments. 1. First, I think it would also be beneficial to request information from the requestor concerning whether the opposing party has been notified of, and agrees to, the request for the continuance. There are instances where a matter has been continued several times already, and it would be helpful to the court if they knew whether the sides were in agreement about the need for a further continuance. 2. Second, the committee and the Judicial Council may want to consider whether DV-115 and DV-116 should be modified so they can be used when a party is seeking a continuance concerning a pending request to renew a restraining order (i.e., DV700). Currently, DV115 and 116 do not contemplate application to DV700, but there are no other forms that explicitly apply to that situation.	1. The committees appreciate the comments. The committees considered this comment and chose not to make this revision to the form because requesting this information may encourage parties to contact each other, potentially in violation of protective orders in place. 2. The committees appreciate the comment. The committees believe that having a set of continuance forms (request and order forms) for renewal hearings would be beneficial for litigants and courts. Preliminarily, the committees believe that having these forms in the 700 series would make the forms simpler and easier to find for self-represented litigants. The committees will consider developing new forms in the 700 series for civil harassment, domestic violence, elder abuse, workplace and restraining orders, as time and resources permit.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
6.	Stoever, Jane K. Clinical Professor of Law Director, UCI Initiative to End Family Violence Director, Domestic Violence Clinic University of California, Irvine School of Law	NI	Thank you for the invitation to comment on judicial council forms regarding continuances and alternative service in domestic violence cases. I have taught domestic violence clinics for over 15 years, having taught at the law schools at Georgetown, American University, and Seattle University prior to being hired in 2013 to direct the Domestic Violence Clinic at the University of California, Irvine (UCI) School of Law, where I also teach Family Law, Domestic Violence Law, and Legal Ethics. The UCI Law Domestic Violence Clinic testified in favor of Assembly Bill 2694 (Stats. 2018, ch. 219) on behalf of multiple clients who were unable to receive legal protection when they could not achieve personal service in domestic violence restraining order cases. The recommendations in this Comment are based on my experience litigating cases in jurisdictions that have long permitted alternative service in domestic violence cases; my research, as reflected in my recently published article: Access to Safety and Justice: Service of Process in Domestic Violence Cases, 94 WASH. L. REV. 333 (2019); my clients' insights about service over many years; and my clinic interns' recommendations about the proposed forms. The form proposals in SPR19-39 and SPR19-37 implement the alternative service options that now appear in Family Code Section 6340(a)(2), increasing survivors' and their children's access to safety and justice. My Domestic Violence Clinic reviewed the proposed forms, being particularly mindful of the high percentage of pro per litigants in	The committees appreciate the comments.

	Commenter	Position	Comment	Committee Responses
			domestic violence cases in California. We have several recommendations to increase the understanding of legal options, all of which apply to the SPR19-37 packet. 1. Our first recommendation aims to increase knowledge of the new provisions in Family Code Section 6340(a)(2). We suggest that the DV-115, in the Instructions section or under 4(a), include the following language or similar language: "Read DV-205-INFO, What if the Person I Want Protection From Is Avoiding (Evading) Service if, after diligent effort, you have been unable to accomplish personal service." Cross-referencing the DV-205-INFO will increase knowledge of legal options and increase efficiency for courts and litigants, as petitioners may otherwise return to court numerous times without being aware that they can request alternative methods of service. 2. Our second set of recommendations seeks a streamlined way of requesting alternative service. The DV-205-INFO instructs, "If you believe you are eligible for alternative service, you can complete form DV-115, Request to Continue Hearing, to make this request." The proposed DV-115, however, does not include a question prompt for doing so. Based on page 5 of the SPR19-37, we understand that the Family and Juvenile Law Advisory Committee considered including an item in the DV-115 regarding alternative means of service but	1. The DV-115 is a form that can be used by either party to request a continuance. Because the new alternative service laws only apply to petitioners the committees did not include reference to form DV-205-INFO. If in the future the committee proposes a request for alternative service form, form DV-205-INFO can be referenced on that form. 2. Thank you for your comment. The committee has revised form DV-205-INFO to remove any references to form DV-115. Based on the comments submitted, the committee will consider whether to propose a new request for alternative service form in the future. The committee does not believe that form DV-115 should be revised to include the specific questions posed by commenter as the revisions to form DV-115 would be substantial and including the information may confuse petitioners that are not seeking

	Commenter	Position	Comment	Committee Responses
			determined that petitioners could instead use form FL-980 to request publication or posting. This determination is inconsistent with the instructions in DV-205-INFO to use the DV-115 to request alternative service; furthermore, the DV-115 does not guide litigants to the FL-980, and the FL-980 does not provide options for substituted service and other means beyond publication or posting. We recommend that the DV-115, at item 4, include the following option: "After diligent effort, I have been unable to accomplish personal service, and there is reason to believe that the restrained party is evading service. Explain:" An additional prompt should ask litigants to identify which of the following methods of service would be designed to "give reasonable notice of the action to the respondent: substituted service (mailing service and delivery to a person at the respondent's home, mailing address, or workplace), publication, posting, or other." These questions provide a clear way to request alternative service and prompt litigants to provide information the judicial officer needs, increasing judicial efficiency as the judge enters orders in the DV-116. 3. Finally, the DV-116, at item 6(e), could provide a brief explanation of what "substituted service" is, namely that it means leaving a copy and mailing a copy of papers to be served to the restrained person's home or mailing address or workplace. We recommend that 6(e) state as	alternative service which represent the majority of cases. 3. The committee has included this information, with minor edits, on form DV-117, *Order Granting Alternative Service*. Form DV-117 would be an attachment to form DV-116 and is being proposed in a separate proposal that

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			follows, with our addition underlined here: "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):_____, by leaving a copy with a person over age 18 and mailing a copy to the restrained party's ☐ home ☐ mailing address ☐ workplace." The proposed DV-116 helpfully directs the protected party to the DV-205-INFO in the next sentence. We posit that briefly identifying the meaning of "substituted service" within the DV-116 will help protected parties understand and follow the court order. This Comment seeks to further the legislative purpose of domestic violence restraining orders by increasing the accessibility of this vitally important legal remedy for abuse survivors who are unable to accomplish personal service. Thank you for your consideration of these recommendations. I encourage you to contact me with any questions.	would have the same effective date as this proposal, if both are approved by the council.
7.	Superior Court of California, County of Los Angeles	AM	Proposed Modifications: Forms CH, DV, EA, SV and WV-115 1. Section 1a. Add corresponding form name: a. My name (as reflected on the CH, DV, EA, SV or WV-100) is: _____	1. The committees appreciate the comment but do not agree that the additional language is needed. It would add more text for litigants to read but does not seem to make it easier to complete this item. Also, the case number

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
				serves as a way to identify the parties in the action.
			2. Section 2a. Add corresponding form name: a. The other party in this case is (full name as reflected on the CH, DV, EA, SV or WV-100):_____	2. See response above.
			3. Section 3. Change first checkbox to: Yes. A Temporary Restraining Order (Form CH, DV, EA, SV or WV-110) was issued on (date):…	3. The committees did not make this change because the language that is proposed is simpler to understand.
			Form GV-115 4. Section 1a. Add: a. My name (as reflected on the GV-100) is: _____	4. See response number 1 above.
			5. Section 2a. Add: a. The other party in this case is (full name as reflected on the GV-100):_____	5. See response number 1 above.
			6. Section 4. Change first checkbox to: Yes. A Temporary Restraining Order (Form GV-110) was issued on (date):…	6. The committees chose to not make this edit to the form. See response 3 above.
			Forms CH, DV, EA, GV, SV, and WV-116 7. After Section 1 and 2 add in bold “The court will complete the rest of this form”	7. The committees agree and have added this language.
			8. Section 3a. Change: □ The hearing is NOT rescheduled. The court hearing will be remains scheduled on (date):_____	8. The committees did not make this change. The existing language was chosen to maintain consistent language choices that are readable at the lowest reading level possible to convey

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

	Commenter	Position	Comment	Committee Responses
				the meaning. "The request to reschedule the court date is **denied**. Your court date is:"
			9. Section 4b. Change: The orders listed in form CH, DV, EA, GV, SV or WV-110 issued on (date)_____, expire at the end of the hearing on (date):__ date listed above in 3b.	9. This section allows the court to fill in an expiration date that is different than the date of the next court hearing. This change was requested by courts to provide flexibility. In some situations, the court may set multiple hearings and rather than having to extend the TRO each time, this change allows courts to extend the TRO beyond the next court hearing. The committees have added language so that in the event the expiration date field is left blank the temporary restraining order will expire at the end of the court date listed on the order.
			10. Section 4c. Change: ….The new orders expire at the end of the hearing on (date):__ listed above in 3b.	10. For a modified TRO the committees propose removing the expiration date as because it will be listed on the new DV-110 that is issued.
			Request for Specific Comments:	
			11. Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose.	11. No response required.
			12. Should the forms include the contact information for the requesting party? If so, please explain. It should be optional for the requesting party to provide contact information. It would give the court the ability of notifying the requesting party of a change in date for the hearing, but it would also give	12. The committees agree with the concern that including the protected party's contact information on the form could lead to unwanted contact by the restrained party. The committees have modified item 1 in the request forms (115 in each series) so that the contact information will only be completed if

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			the restrained party an avenue to further harass the protected party.	the requesting party is the restrained party. There is no need for the protected party to provide their contact information again because they would have already done so on form DV-100. This revision should address the commenter's concern for this form. As for the suggestion to include a checkbox to allow the petitioner (protected party) to note a confidential address pursuant to Family Code section 6225 on the forms, the committees will consider this request in a future cycle.
			13. 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? Yes, this item should be added.	13. The committees have decided that the form should not include an item that queries whether notice has been provided to the other party at this time. The committees will consider whether a Rule of Court or other change should be made in the future to ensure that these requests are made with adequate notice as either side is entitled to make a request for continuance.
			14. 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? Yes, law enforcement agencies should have this ability.	14. The committees agree and revised forms GV-115 and GV-116 may be used to continue hearings set following issuance of gun violence EPOs that have not been served.
			15. Are the forms easy for users to understand? Yes, with the suggested modifications.	

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			16. Do you have any suggestions for improving their usability or readability? Please see the suggested modifications. The advisory committee seeks comments from courts on the following cost and implementation matters: 17. Would the proposal provide cost savings? If so please quantify. No, we still need to reproduce numerous forms. 18. 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. We will need to provide training on how to fill out the forms for judicial assistants and judicial officers. Probably a 4 to 8-hour training depending on the size of the court. 19. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. 20. How well would this proposal work in courts of different sizes? Proposal would work well uniformly across courts of different sizes.	15. See committees' responses above in response to suggested modifications. 16. See committees' responses above in response to suggested modifications. 17. The committees appreciate the comment and understand that there is no cost savings. 18. No response required. 19. No response required. 20. No response required.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			21. 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? Yes, law enforcement agencies should have this ability.	21. The committees agree and have proposed revisions to GV-115 and GV-116 so that they may be used to continue a GV EPO when service has been unsuccessful.
8.	Superior Court of California, County of Orange Civil, Small Claims and Probate Division By Sean E. Lillywhite Administrative Analyst/Officer Training & Analyst Group (TAG) Superior Court of California, County of Orange	NI	1. The approval of these forms will require extensive modification to procedures for all of the different scenarios. Case processing and courtroom staff will require training for Civil and Probate. 2. The third page on forms WV-116, CH-116, DV-116, EA-116, SV-116, GV-116 all make reference to CLETS-TCH,CLETS-TWH, CLETS-TRO, CLETS-TEA or TEF, CLETS TSV in the Clerk's Certificate of Mailing portion. In order to avoid confusion, we recommend including the specific form number along with the name. For example, Order on Request to Continue Hearing CLETS-TWH WV116 or Order on Request to Continue Hearing CLETS-TCH CH-116. *Taken from comments on proposal LEG 19-03	1. No response required. 2. The forms have been modified to add the form number to this section.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			3. While slightly out of scope of this invitation, if the petitioning party asks for a continuance at the 21-day hearing, under what circumstances should courts grant them. Should they have to convince the court again that there is an immediate danger that requires extending the EPO past the 21 days? What if there were issues with service of either the EPO or the hearing? Our judicial officer for these hearings has special concerns because the protective orders deny a constitutionally protected right and feels the bar for denying those rights further should be high.	3. The hearing can be continued pursuant to Penal Code section 18195, which states, "Any hearing held pursuant to this chapter may be continued upon a showing of good cause. Any existing order issued pursuant to this division shall remain in full force and effect during the period of continuance." The chapter referenced by this section is Chapter 4, Gun Violence Restraining Order Issued After Notice and Hearing, specific to §§ 18170–18197, which encompasses the hearing requirement found in section 18175 (the provision relating to EPOs)..
9.	Superior Court of California, County of Riverside By Susan Ryan Chief Deputy - Legal Services	A	1. Does the proposal appropriately address the stated purpose? Yes. 2. Should the forms include the contact information for the requesting party? If so, please explain. No, the contact information for the requesting party is not needed on the DV-116 form as it is reflected on the DV-115. 3. 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? Yes, it serves as a reminder that the other party needs to receive notice of the request for	1. No response required. 2. The committees agree, and the item will not be on the 116 forms. 3. The committees have decided that the form should not include an item that queries whether notice has been provided to the other party at this time because the committee members were worried that this could confuse SRL's into possibly violating the exiting protective orders to contact the other party.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			continuance. It will also inform the judicial officer reviewing the case as to whether the other party has been notified of the request for continuance.	The committees will consider whether a Rule of Court or other change should be made in the future to ensure that these requests are made with adequate notice as either side is entitled to make a request for continuance.
			4. 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? No, law enforcement agencies should not have the ability to request a continuance if the emergency protective order has not been served. The moving party requesting the restraining order can indicate that the emergency protective order has not been served when requesting the continuance.	4. Unlike GV-100, gun violence emergency protective orders can only be requested by law enforcement. Based on other comments received the proposed forms GV-115 and GV-116 may be used to continue hearings set following the issuance of gun violence EPOs that have not been served.
			5. Are the forms easy for users to understand? Yes.	5. No response required.
			6. Do you have any suggestions for improving their usability or readability? No, the forms are easy for users to understand and process.	6. No response required.
			7. Would the proposal provide cost savings? If so please quantify.	7. The committees appreciate the comment.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			Yes, overtime this proposal will hopefully save time for court staff when entering the information into CLETS.	
			8. 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. Clerks responsible for CLETS entries would need to be informed and retrained on the revisions made on the forms.	8. The committees agree that training for individuals responsible for CLETS/CARPOS entry should be trained on the revisions to the forms.
			9. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	9. No response required.
			10. How well would this proposal work in courts of different sizes? The size of the court would have no impact.	10. No response required.
10.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	AM	1. Q: Does the proposal appropriately address the stated purpose? Yes.	1. No response required.
			2. Q: Should the forms include the contact information for the requesting party? If so, please explain.	2. The committees appreciate the response. See response to the first commenter above.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			Yes, for consistency the contact information should be included on the 116 numbered forms. The request and order for restraining order, 100 and 110-numbered forms currently include this information. The advisal listed on the current version of the 116 numbered forms (i.e. "If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead.") should be included.	
			3. Q: 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? Yes, at least for non-domestic violence restraining orders. The initial request forms (CH/EA/GV/SV/WV-100) include an item "Temporary Restraining Order" for the petitioning party to indicate whether or not the other party was notified that a TRO was being sought against them. This information will be useful to the reviewing judicial officer.	3. The committees have decided that the 115 forms should not include an item that queries whether notice has been provided to the other party at this time because the committee members were worried that this could confuse SRL's into possibly violating the exiting protective orders to contact the other party. The committees will consider whether a Rule of Court or other change should be made in the future to ensure that these requests are made with adequate notice as either side is entitled to make a request for continuance.
			4. Q: 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? Yes.	4. The committees agree and revised forms GV-115 and GV-116 may be used to continue hearings set after issuance of gun violence EPOs that have not been served.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			5. Q: Are the forms easy for users to understand? Yes. However, this court proposes using consistent language on the forms to provide further clarity. See general comments.	5. The committees agree. See response to general comments below.
			6. Q: Do you have any suggestions for improving their usability or readability? Yes, see general comments.	6. See responses to general comments.
			7. Q: Would the proposal provide cost savings? If so, please quantify. No.	7. No response required.
			8. 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. Revising internal procedures and restraining order packets.	8. No response required.
			9. Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	9. No response required.
			10. Q: How well would this proposal work in courts of different sizes?	10. No response required.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			It appears that the proposal would work for courts of all sizes. GENERAL COMMENTS: 11. Proposed changes use different terminology for the same process, which could cause confusion among self-represented litigants. Request to Continue Hearing (CH-115) refers to the process as: • "Continue Hearing" (form title) • "Change the hearing" (Instructions) • "Reschedule the hearing" (Notice section & item 4) Order on Request to Continue Hearing (CH-116) refers to the process as: • "Continue Hearing" (form title) • "Change the hearing" (Instructions) • "Reschedule the hearing" (Items 3 & 5) • "Continuance" (Items 5b & d) Our court proposes using one term throughout the 115 & 116 series of forms to limit confusion. In invitation SPR19-28, the Family and Juvenile Law Advisory proposes replacing form FL-306 Request to Continue Hearing with a new FL-306 Request to Reschedule Hearing and to add "rescheduling the hearing" to rule 5.2 to assist self-represented litigants. Since family actions often	11. The committees agree that terminology should be used consistently. The committees have decided on the following terminology to use in the forms: "reschedule" instead of "continue," "court date" instead of "court hearing," and "granted" instead of "issued." Revising the form titles would require revising many cross-references to the form titles, and this change would need to go out for public comment and so will be deferred for consideration in a future rule making cycle as time and resources allow

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			involve DV issues, it may be beneficial to those same litigants to rename the 115 and 116-series forms to use consistent terminology. 116 Forms: 12. Item 5d: Propose replacing "The party wanting a continuance" with "requesting." 13. Item 6c(2): Propose including the method of service (i.e., mail or personal) for restrained party to notify protected party. Form DV-115: 14. Item 1(b): Suggest editing and bolding the sentence, "If you have a lawyer give your lawyer's name, address and contact information below, not your own information." This should also result in eliminating item 1(d). 15. Item 2(b): Could lead to confusion regarding the next hearing regarding the DVTRO or general hearing. 16. Item 4: Although it was previously considered and rejected in the alternatives considered, it would be beneficial to either include a request for the party to serve by alternative means, or at the very least, include a box stating the litigant	12. The committees have revised this item to reflect the three scenarios in which a continuance may be granted: (1) on a showing of good cause; (2) first request by respondent to allow for more time to prepare; and (3) on the courts own motion. 13. The committees have included these options on the revised forms. 14. The committees thank the commenter for the suggestion but choose not to follow the suggestion because the form is clearer the way that it is. 15. The committees have left the language because the form is specific to continuing the hearing date listed in this section. 16. The Family and Juvenile Law Advisory Committee will consider whether a request for alternative service should be created in the future. Such a form would need to go out for public comment. The committee believes that significant changes would have to be made to

	Commenter	Position	Comment	Committee Responses
			is separately requesting to serve by alternative means and list the FL-980 and an "other section." This would assist the litigants and the court. Self-represented litigants often show up at the hearing and make the request to serve by alternative means. Also, the proposed form DV-205-INFO includes language on page 1 that if the litigant is eligible for alternative service, they can complete the DV-115 form to make this request.	form DV-115 for it to provide enough information for the court to grant a request for alternative service. This is not to say that form DV-115 could not be used together with other available forms. The committee has revised form DV_205 to remove any reference to form DV-115.
			Form DV-116:	
			17. Item 3(a)(1): Suggest modifying this to state, "The Temporary Restraining Order issued on [DATE} remains in full force and effect."	17. The committees believe that reference to any restraining order already issued is sufficient.
			18. Item 6(b): Suggest adding a box to indicate how the stipulation was made (i.e. in writing, in open court, etc.)	18. The committees thank the commenter for the suggestion but believe this level of detail is not needed for the item on service. If a court believes the information should be added, it could be noted in the reason for continuance section or on a minute order.
			Form GV-115	
			19. Item 4 & Notice (following item 4): Add "Gun Violence" to reflect the form name of EPO-002.	19. The committee agrees, and the form has been modified to make this change.
			20. Footer: Add "GVEPO or Temporary Restraining Order) to clarify that the form does not apply to emergency protective orders for	20. The footer was changed to clarify that it is Order on Request to Continue Hearing (EPO-002 or Temporary Restraining Order) (CLETS-EGV or CLETS-TGV) (Gun

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			domestic violence, child abuse, elder abuse of stalking (EPO-001).	Violence Prevention), which the committees believe should be sufficient clarification.
			Form GV-116 21. Items 3a(1), 4, 4a, & Notice (following item 4): Add "Gun Violence" to reflect the form name of EPO-002.	21. The committees agree the forms have been modified to make this change, except to the Notice section where it is a blanket statement about "Gun Violence Restraining Order as opposed to the specific orders.
			22. Items 5a & 5b: Replace "The party in 2" with "The respondent"	22. The forms have been modified to make this change.
			23. Footer: Add "GVEPO or Temporary Restraining Order) to clarify that the form does not apply to emergency protective orders for domestic violence, child abuse, elder abuse of stalking (EPO-001).	23. See response to number 20 above.
			24. Q: 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? Yes.	24. The committees agree and revised forms GV-115 and GV-116 may be used to continue hearings set following issuance of gun violence EPOs that have not been served.
11.	Superior Court of California, County of Ventura By Julie Camacho Court Manager	AM	1. Modifications to the 116 series of forms, Order on Request to Continue Hearing: Removal of Section 3 from the forms: Originally this court was in agreement with the removal of this	1. For the order forms (116 in each series) the committees believe that the benefits of omitting the requester's contact information outweigh any potential benefit. The

	Commenter	Position	Comment	Committee Responses
			information from the order forms, but after further discussion with court staff experienced in filing these forms, I believe this information should remain on the forms for the specific reason that an oral request to reschedule can be made by a responding party, who has not previously appeared in the case, at the time of the hearing on the temporary restraining order. In these circumstances the filing clerk must capture the address information of a self-represented respondent, or the information of the lawyer representing the respondent. This information must be present on the form in order for the clerk to enter the information into the court's case management system and is important in the event the court needs to send notice to the parties in the case. For these reasons, I ask that the Item 3 remain on the order forms.	committees believe that capturing the restrained party's contact information is unlikely even in the scenario provided by commenter because it is unlikely that a court would have the restrained party prepare the order. This is because the order continuing the hearing would also include any TRO granted by the court. This order would need to be completed immediately after the hearing to ensure that the protected party has proof that a TRO remains in effect and that the order is reflected in CLETS. In this situation, it is likely that the court, self-help center staff, or protected party would complete the order after hearing.
			2. Recommend that the wording in Item number 3 be modified. As currently written the denial of the request for continuance is not clearly stated and the wording "The hearing is NOT rescheduled. The court hearing will be on (date)" can be confusing to self-represented litigants. The order should more clearly state "The request to reschedule the hearing is DENIED. The court hearing will remain on (date)"	2. The committees agree and have revised this section to clearly state whether the request has been granted or denied.
			3. The same recommendation is made for the granting of the request. The order granting	3. Same response as above.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			should more clearly state: The request to reschedule the hearing is GRANTED. The hearing is rescheduled for the day and time listed below. See additional orders in 4-8”	
			4. To be consistent with the changes in SPR19-28, all of the forms in this invitation to comment should be revised to change the word “continue” in the title of the forms to “reschedule”. Not only will this make the forms consistent with the language changes to the FL-306, 307, 308 and 309 it will also make the title of these forms consistent with the wording in the body of the forms, which do use the word “rescheduled” and not “continued”.	4. The committees agree that consistency is the goal but cannot make changes to other forms without first circulating them for comment. This revision will be proposed in a future rule cycle depending on time and resources.
			5. Recommend that Items 4b and 4c on the 116 forms be revised to delete the requirement that the judicial officer fill in the new expiration date of any existing temporary restraining orders. By law the restraining order will remain in effect until the date of the rescheduled hearing and the extra time that it takes for the judicial officer to complete this additional information in light of the number of orders that are submitted far outweighs the number of cases that have more than one court date. The wording …expire at the end of the hearing in 3” should be inserted in place of the date field.	5. The committees considered this suggestion and in light of this suggestion the forms have been modified to include an option that the court can either write the date of the expiration of the temporary order or leave it blank “(If no date is listed, the TRO expires at the end of the court date listed in 3b).”
			6. Item 6 – Service of the Order – need clarification of Item 6b “Restrained party agreed (stipulated) to this order. Further service of this	6. The restrained person could agree to a continuance at the time of hearing or prior to the hearing. However, the goal of this item is

	Commenter	Position	Comment	Committee Responses
			order is not required for enforcement purpose." Is it anticipated that this item will be checked if the respondent appears at the hearing and enters into a written agreement to continue the hearing? If so, it seems Item 6a would be sufficient.	to indicate that further service on the restrained person is not needed for enforcement purposes. Instead of eliminating item 6b, the forms have been modified to combine items 6a and 6b.
			7. Recommend moving item 6d to the 6b position, move 6b to the 6d position. Most often the protected requests a continuance, so moving item 6d to 6b makes the flow of item 6 more user friendly.	7. This item has been reorganized to make it easier for the moving party to understand.
			8. Items 6c, d and e – instead of requiring entry of a date for service to be completed by, which leaves room for unnecessary errors, the form should be revised to replace the wording "no later than (date)" with the wording, "at least five days or ( )_____ before the hearing…"	8. The committees proposed this change to make the deadline for service easier to understand for self-represented litigants. The committees believe this is an important change as service requirements are often hard for self-represented litigants to understand.
			9. Page 3 – Instructions to Clerk – if no temporary orders were issued pending the hearing and box 4a is marked on Page 1 of the 116 forms then the order is not sent to law enforcement for entry into CLETS. The instructions in this box should be modified to read: If there is are temporary orders in effect and 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.	9. The committees have revised the language to indicate that the order needs to be entered into CLETS only when a TRO is extended, modified or terminated.

	Commenter	Position	Comment	Committee Responses
			10. Although not included in this invitation to comment, it would be beneficial to the courts if the requirements for requesting a continuance of the hearing on the temporary restraining order for all these restraining order types was set forth in the appropriate code sections that speak to continuances. The code does not specify a party is required to give notice to the other side in the same manner as seeking ex parte orders if the request is made prior to the hearing date. This court is currently requiring that ex parte notice be given to the other side when a request is made prior to the hearing, in cases with temporary orders in effect and without temporary orders in effect. In addition, it would be helpful if a deadline for submitting a request to reschedule the hearing at least 5 days prior to the court hearing was implemented and specified in the code.	10. This comment is outside the scope of this proposal.
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	AM	Suggested modifications: Forms CH, DV, EA, SV and WV-115 1. Section 1a. Add corresponding form name: a. My name (as reflected on the CH, DV, EA, SV or WV-100) is: _____ 2. Section 2a. Add corresponding form name:	1. The committees appreciate the comment but do not agree that the additional language is needed. It would add more text for litigants to read but does not seem to make it easier to complete this item. Also, the case number serves as a way to identify the parties in the action. 2. See response above.

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			a. The other party in this case is (full name as reflected on the CH, DV, EA, SV or WV-100):_____ 3. Section 3. Change first checkbox to: Yes. A Temporary Restraining Order (Form CH, DV, EA, SV or WV-110) was issued on (date):… Form GV-115 4. Section 1a. Add: a. My name (as reflected on the GV-100) is: _____ 5. Section 2a. Add: a. The other party in this case is (full name as reflected on the GV-100):_____ 6. Section 4. Change first checkbox to: Yes. A Temporary Restraining Order (Form GV-110) was issued on (date):… 7. Forms CH, DV, EA, GV, SV, and WV-116 After Section 1 and 2 add in bold "The court will complete the rest of this form" 8. Section 3a. Change: □ The hearing is NOT rescheduled. The court hearing will be remains scheduled on (date):_____	3. The committees did not make this change because the language that is proposed is simpler to understand. 4. See response number 1 above. 5. See response number 1 above. 6. The committees chose to not make this edit to the form. See response 3 above. 7. The committees agree and have added this language. 8. The committees did not make this change. The existing language was chosen to maintain consistent; language choices that are readable at the lowest reading level possible to convey the meaning. "The request to reschedule the court date is **denied**. Your court date is:" 9. This section allows the court to fill in an expiration date that is different than the date

SPR19-37
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)

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

	Commenter	Position	Comment	Committee Responses
			9. Section 4b. Change: The orders listed in form CH, DV, EA, GV, SV or WV-110 issued on (date)_____, expire at the end of the hearing on (date):__ date listed above in 3b.	of the next court hearing. This change was requested by courts to provide flexibility. In some situations, the court may set multiple hearings and rather than having to extend the TRO each time, this change allows courts to extend the TRO beyond the next court hearing. The committees have added language so that in the event the expiration date field is left blank the temporary restraining order will expire at the end of the court date listed on the order. 10. For a modified TRO the committees propose removing the expiration date as because it will be listed on the new DV-110 that is issued.
			10. Section 4c. Change: ….The new orders expire at the end of the hearing on (date):__ listed above in 3b.	

Item number: 38

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Protective Orders: New Forms for Protecting Minors' Information

Rules, Forms, Standards, or Statutes Affected
Approve forms CH-160-INFO and DV-160-INFO

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 16, 2019

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

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

Executive Summary

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee jointly recommend that the Judicial Council adopt 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). New Judicial Council forms to implement this law went into effect January 1, 2019.

Recommendation

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2020:

1. Adopt form CH-160-INFO, *Privacy Protection for a Minor,* in the Civil Harassment Prevention series; and

2. Adopt form DV-160-INFO, *Privacy Protection for a Minor,* in the Domestic Violence Prevention series.

Relevant Previous Council Action

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.

Analysis/Rationale

In civil harassment restraining order and domestic violence restraining order cases, the vast majority of litigants are self-represented. Understanding the court process, the law, and the steps involved in any case is a daunting task, especially if the litigant is in the middle of a crisis or suffering from trauma. The council has made many attempts to make the law more accessible, including providing protective order forms in plain language. Information sheets are an additional tool that courts can use to help provide access to litigants. Having information sheets to explain the process for this request is important because the law that governs these requests is complicated. Providing this information would advance the Judicial Council's goal of improving access to the court system.

The proposed forms contain the following information:

- An overview of the legal process for these requests;
- Actionable steps that litigants should take to make a request;
- Tips on how to understand and comply with the court's orders; and
- Actionable steps to accomplish legal service, when applicable.

The committees included icons to help individuals more quickly and accurately understand the information provided. The use of checklists and flowcharts on pages 2 through 4 make the forms more interactive and user-friendly.

Differences between form CH-160-INFO and form DV-160-INFO

Both proposed information forms have almost identical content. Differences between the forms include 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 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.

Policy implications

There are no policy implications for this proposal. The information sheets are to inform litigants of a new remedy created by recently enacted legislation.

Comments

This proposal went out for public comments from April 11 to June 10, 2019. The committees received comments from nine commenters including the Superior Courts of Los Angeles, Orange, San Bernardino, San Diego, and Ventura Counties; the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC); the Family Violence Law Center; and a paralegal student from Washington, D.C. Nine commenters responded to the proposal. Four commenters agreed with the proposal, two commenters agreed with the proposal if modified, two commenters did not indicate a position, and one commenter opposed the proposal. The commenter that opposed the proposal did not directly comment on the substance of the proposal but shared their personal experience with the court system as a litigant in a domestic violence proceeding.

---

[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 Gov. Code, §§ 68630–68641.

[3] Code Civ. Proc., § 527.6(y).

[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).

A few comments provided suggestions clarifying the role of self-help centers. One commenter suggested clearly stating that self-help staff do not help with redactions in a situation where a self-represented litigant is ordered by the court to prepare redacted documents. Two commenters suggested including that self-help centers provide legal information and not legal advice. The committees carefully considered these comments and decided to not accept these revisions. Self-help centers provide a variety of services, including preparing proposed orders. While some self-help centers may not prepare the redacted documents, staff can assist by explaining what redaction means, what the judge's orders are, and give examples of how a document can be redacted. The committees included the following language to clarify the role of self-help center staff: "Self-help center staff will not act as your lawyer but can give you information to help you decide what to do in your case."

One commenter suggested that it would be beneficial for the CH-160-INFO and DV-160-INFO forms to include information on what the party may do if the court denies their sealing request (request for confidentiality). The committees agree with the commenter and added the following language to the forms, "If the judge does not approve your request, you may have other legal options available to you. Visit your local court's self-help center or talk with a lawyer."

The committees posed specific questions in the Invitation to Comment, including the following: "Do you have any suggestions for improving the usability or readability?" There were several specific comments with suggestions for improving the readability of the forms. The specific comments and changes in the forms are noted on the comment chart. There were some changes made to lower the reading level in specific places, although there are some words, like "domestic violence restraining order," which bring the reading level up to a ninth-grade reading level.

Alternatives considered

As mentioned above, the committees considered whether to include self-help centers as a resource for help preparing redacted documents. The committees believe it is appropriate to list self-help centers as a resource.

While the draft forms in the Invitation to Comment did not include information regarding service of court papers, the committees decided to add this information to the proposal. Service of process is a particularly hard concept for litigants to understand. While including the information substantially lengthened the forms, the committees believe this information will help litigants comply with service requirements.

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.

Attachments and Links

1. Forms CH-160-INFO and DV-160-INFO, at pages 6–13
2. Chart of comments, at pages 14–23.
3. Link A: Assembly Bill 953, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB953.*

CH-160-INFO Privacy Protection for a Minor (Person Under 18 Years Old) Civil Harassment Prevention

Can I keep information about a minor confidential?

Yes. In a civil harassment restraining order case, you can ask a judge to make information about a minor confidential. Confidential means that the public is unable to see the information, because the information is kept private. This is important because most papers in your court case are available for the public to see. This means anyone can view information on your papers, including information about a minor. If the judge grants your request, the public will not be able to see the minor's information on your paperwork.

Who can make this request?

Several people can make this request, including a minor's parent or legal guardian. Any minor protected by a restraining order can make this request, as well. Also, any person, including a minor, who is the accused person in a case may make this request.

A minor can make this request without the help of an adult. This depends on the minor's age, though. If the minor is 12 years old or younger, the judge may want an adult to help the minor make this request.

For more information on who can make this request, contact your local self-help center or a lawyer.

What information can I ask the judge to make confidential?

A judge can make any information about a minor confidential. That means that you can ask to make confidential, the minor's name, address, any statements about the minor's abuse, or any abuse the minor witnessed.

If you only want to protect the minor's address, you do not have to make this request. Instead, you can use a different address on your restraining order request, such as a mailing address that is not where the minor lives, a P.O. box, or someone else's address. If you use someone else's address, be sure to get their permission first.

Whatever address you use, make sure you will get your mail regularly. This is important, because the address you use is the address the court and 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 person you want to restrain used or threatened to use violence against you or stalked you, you do not have to pay a filing fee. Otherwise, you must pay a filing fee.

If you cannot afford to pay the filing fee, ask the court clerk how to apply for a fee waiver. You will need to fill out form FW-001.

If the order is based on prior acts of violence, a credible threat of violence, or stalking, the sheriff or marshal must serve your order for free. 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 must pay the sheriff or marshal to serve the order.

I need an interpreter. How can I get help?

You may use form INT-300 to request an interpreter. Ask court staff for information.

I have a disability. How can I get help?

You may use form MC-410 to request assistance. Contact the disability/ADA coordinator at your local court for more information.

Do I need a lawyer to make this request?

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. (See below.)

Where can I find a self-help center?

Find your local court's self-help center at www.courts.ca.gov/selfhelp. Self-help center staff will not act as your lawyer but can give you information to help you decide what to do in your case.

Where can I find other help?

For safety tips or other help, call or visit the following hotlines online:

National Human Trafficking Hotline, 1-888-373-788; TTY: 711, *humantraffickinghotline.org*;

National Sexual Assault Hotline, 1-800-656-4673, *www.rainn.org*; and

Stalking Hotline, 1-855-484-2846, *victimconnect.org/statistics/stalking/.*

What do I have to do to make information about a minor confidential?

You can use these steps as a checklist.

◯ **Step 1: Complete the forms**

You will need to complete these forms to make your request:

◯ Form CH-160

◯ Form CH-165 (complete items 1 and 2 only)

You can find these forms online at *www.courts.ca.gov/forms*.

► See tips to complete the forms.

To request a restraining order, you need to complete different forms. See form CH-100-INFO for a list of forms you need to complete to request a restraining order.

◯ **Step 2: Take the forms to your court clerk to file**

Find out which courthouse to take your forms to by calling your local court or searching online at *www.courts.ca.gov/find-my-court.htm*.

◯ **Step 3: Understand the judge's order**

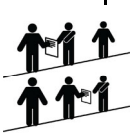
The judge will write your orders on form CH-165. The judge will **grant** or **deny** your request.

► See page 3 for what this means.

◯ **Step 4: Give court papers to other parties**

In some cases, you will need to have your server give court papers to the other parties in your case. This process is called service.

► See page 4 for tips to complete service.



Tips for Step 1: Complete the forms

I only want to protect the minor's address: If you only want to protect the minor's address, you do not have to make this request. See "What information can I make confidential?" on page 1 for more information.

I want to protect multiple minors. Only an adult who is the minors' parent or legal guardian may make a request to protect multiple minors' information.

My right to cancel my restraining order request: If you are the party asking for the civil harassment restraining order and the judge does not grant your confidentiality request, you have the right to cancel your civil harassment restraining order request.

To have your civil harassment restraining order request canceled, check the box on form CH-160, item 7(a), and form CH-160, item 8(d)(1), if it applies.

If you cancel your civil harassment restraining order request, you will **not** receive a civil harassment restraining order at this time.

If, **after** canceling your civil harassment restraining order request, you want to ask for a civil harassment restraining order based on the same facts, you must start the process over. See form CH-100-INFO for more information.

▶Tips for Step 3: Understand the judge's order

Look at form CH-165 to see what the judge decided.

What if the judge granted my request?

Look closely at form CH-165, pages 2–5, to see what information the judge made confidential in your case. If the judge granted your request to keep information confidential, the information the judge decided to keep confidential will not be available to the public. The information will only be available to the parties in the case.

At times, the judge may make information confidential from the other party in your case. If this happens, the judge will complete box 9(b) on form CH-165.

Now, take a close look at item 10 on form CH-165. This tells you who is responsible for redacting the information on your paperwork and deadline for filing it with the court.

Redacting means to hide (blacken or whiten out) information so it cannot be seen. If the judge makes you responsible for redacting the information, your local self-help center may be able to help you.

What if the judge did not grant (denied) my request?

This means that if you move forward with your case, the minor's information will not be confidential on your paperwork. This is important, because anyone can go to your local courthouse and ask to see the documents you filed in this case.

If the judge does not grant your request, you may have other legal options available to you. Visit your local court's self-help center or talk with a lawyer.

▷ **What if I asked to cancel my restraining order request?**

If you checked box 7(a) or 8(d)(1) on form CH-160 and the judge denied your request, the paperwork you turned in with this request will not be available to the public, except for page 1 of form CH-165. This includes form CH-100 and any proposed order forms. The court will either return these forms to you, destroy them, or delete them from their records unless you give the court permission to file the forms.

▷ **What if I file documents with the court in the future?**

If you file documents with the court in the future, be sure to use form CH-175 as a cover sheet and follow the instructions at the top of the form.

▷ **Is there a penalty for disclosing confidential information?**

Misusing or giving out confidential information can result in a fine of up to $1,000 or other court penalties. Confidential information may be given to the police to help them enforce the judge's order.

CH-160-INFO Privacy Protection for a Minor (Person Under 18 Years Old) Civil Harassment Prevention

▶Tips for Step 4: Give court papers to all parties in your case

In some cases, the judge will order you to serve your court papers. Look at form CH-165 to see what the judge decided.

What did the judge decide in your case?

The judge **granted** my request to keep some of the minor's information confidential.

Your papers must be served. Follow steps 1–5 below.

The judge **denied** (did not grant) my request to keep some information confidential. I **canceled** my request for a restraining order and there is **no other issue** in this case for a judge to decide on.

Your papers do not need to be served. You may stop here.

The judge **denied** (did not grant) my request to keep some information confidential. I did not cancel my request for a restraining order. The **case is still open.**

If this is your situation, forms CH-160 and CH-165 must be served by mail or in-person. Follow steps 3–5 below.

◯ Step 1: Find out which papers you need to serve

The judge will check which papers you need to serve to the other parties in your case on form CH-165, item 13.

◯ Step 2: Find out whether you need to serve the other parties personally or by mail.

The judge will check how you need to serve your court papers to the other parties in your case on form CH-165, item 13.

If the judge checks item 13(a), you will need to have your server personally serve (give) your court papers to the other parties in your case.

If the judge checks item 13(b), you will need to have your server mail your court papers.

◯ Step 3: Choose a server

The person who serves your papers is called a server. Your server must be at least 18 years old, not protected by the restraining order, and not involved in your case. **You are not allowed to serve your own court papers.**

Some situations may be dangerous. Think about people's safety when deciding who you choose to serve your court papers.

A sheriff or marshal will serve your court papers for free. Another option is a process server.

A process server is a business you pay to deliver court papers. To hire a process server, look for "process server" on the internet or in the yellow pages.

◯ Step 4: Have your server give your court papers to all parties

For personal service, give your server your court papers as well as form CH-200.

For service by mail, give your server your court papers as well as form CH-250.

◯ Step 5: File proof with the court

The court needs proof that your papers were served. After your server completes form CH-200 or form POS-040, take it to the court to file in your case.

If the sheriff or marshal served your papers, they may use another form for proof instead of form CH-200. Make sure a copy is filed with the court and that you get a copy.

For more information, read form CH-200-INFO or ask your local court's self-help center for help.

DV-160-INFO Privacy Protection for a Minor (Person Under 18 Years Old) Domestic Violence Prevention

Can I keep information about a minor confidential?

Yes. In a domestic violence restraining order case, you can ask a judge to make information about a minor confidential. Confidential means that the public is unable to see the information, because the information is kept private. This is important because most papers in your court case are available for the public to see. This means anyone can view information on your papers, including information about a minor. If the judge grants your request, the public will not be able to see the minor's information on your paperwork.

Who can make this request?

Several people can make this request, including a minor's parent or legal guardian. Any minor protected by a restraining order can make this request, as well. Also, any person, including a minor, who is the accused person in a case may make this request.

A minor can make this request without the help of an adult. This depends on the minor's age, though. If the minor is 12 years old or younger, the judge may want an adult to help the minor make this request.

For more information on who can make this request, contact your local self-help center or a lawyer.

What information can I ask the judge to make confidential?

A judge can make any information about a minor confidential. That means that you can ask to make confidential, the minor's name, address, any statements about the minor's abuse, or any abuse the minor witnessed.

If you only want to protect the minor's address, you do not have to make this request. Instead, you can use a different address on your restraining order request, such as a mailing address that is not where the minor lives, a P.O. box, or someone else's address. If you use someone else's address, be sure to get their permission first.

Whatever address you use, make sure you will get your mail regularly. This is important, because the address you use is the address the court and other party will use to send you papers for your case.

Does this request cost money?

No, this request is free.

I need an interpreter. How can I get help?

You may use form INT-300 to request an interpreter. Ask court staff for information.

I have a disability. How can I get help?

You may use form MC-410 to request assistance. Contact the disability/ADA coordinator at your local court for more information.

Do I need a lawyer to make this request?

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. (See below.)

Where can I find a self-help center?

Find your local court's self-help center at *www.courts.ca.gov/selfhelp*. Self-help center staff will not act as your lawyer but can give you information to help you decide what to do in your case.

Where can I find other help?

The National Domestic Violence Hotline provides free and private safety tips and help in over 100 languages. Call them at 1-800-799-7233; 1-800-787-3224 (TTY); or visit online at *www.thehotline.org*.

What do I have to do to make information about a minor confidential?

If you're ready to start the process for this request, go to page 2 to see a checklist of steps you need to complete in order to ask the judge to make information about a minor confidential.

DV-160-INFO Privacy Protection for a Minor (Person Under 18 Years Old) Domestic Violence Prevention

What do I have to do to make information about a minor confidential?

You can use these steps as a checklist.

Step 1: Complete the forms

You will need to complete these forms to make your request:

- ◯ Form DV-160
- ◯ Form DV-165 (complete items 1 and 2 only)

You can find these forms online at *www.courts.ca.gov/forms*.

► See tips to complete the forms.

To request a restraining order, you need to complete different forms. See form DV-505-INFO for a list of forms you need to complete to request a restraining order.

Step 2: Take the forms to your court clerk to file

Find out which courthouse to take your forms to by calling your local court or searching online at *www.courts.ca.gov/find-my-court.htm*.

Step 3: Understand the judge's order

The judge will write your orders on form DV-165. The judge will **grant** or **deny** your request.

► See page 3 for what this means.

Step 4: Give court papers to other parties

In some cases, you will need to have your server give court papers to the other parties in your case. This process is called service.

► See page 4 for tips to complete service.

Tips for Step 1: Complete the forms

I only want to protect the minor's address: If you only want to protect the minor's address, you do not have to make this request. See "What information can I make confidential?" on page 1 for more information.

I want to protect multiple minors. Only an adult who is the minors' parent or legal guardian may make a request to protect multiple minors' information.

My right to cancel my restraining order request: If you are the party asking for the domestic violence restraining order and the judge does not grant your confidentiality request, you have the right to cancel your domestic violence restraining order request.

To have your domestic violence restraining order request canceled, check the box on form DV-160, item 7(a), and form DV-160, item 8(d)(1), if it applies.

If you cancel your domestic violence restraining order request, you will **not** receive a domestic violence restraining order at this time.

If, **after** canceling your domestic violence restraining order request, you want to ask for a domestic violence restraining order based on the same facts, you must start the process over. See form DV-505-INFO for more information.

▶Tips for Step 3: Understand the judge's order

Look at form DV-165 to see what the judge decided.

What if the judge granted my request?

Look closely at form DV-165, pages 2–5, to see what information the judge made confidential in your case. If the judge granted your request to keep information confidential, the information the judge decided to keep confidential will not be available to the public. The information will only be available to the parties in the case.

At times, the judge may make information confidential from the other party in your case. If this happens, the judge will complete box 9(b) on form DV-165.

Now, take a close look at item 10 on form DV-165. This tells you who is responsible for redacting the information on your paperwork and deadline for filing it with the court.

Redacting means to hide (blacken or whiten out) information so it cannot be seen. If the judge makes you responsible for redacting the information, your local self-help center may be able to help you.

What if the judge did not grant (denied) my request?

This means that if you move forward with your case, the minor's information will not be confidential on your paperwork. This is important, because anyone can go to your local courthouse and ask to see the documents you filed in this case.

If the judge does not grant your request, you may have other legal options available to you. Visit your local court's self-help center or talk with a lawyer.

▷ **What if I asked to cancel my restraining order request?**

If you checked box 7(a) or 8(d)(1) on form DV-160 and the judge denied your request, the paperwork you turned in with this request will not be available to the public, except for page 1 of form DV-165. This includes form DV-100 and any proposed order forms. The court will either return these forms to you, destroy them, or delete them from their records unless you give the court permission to file the forms.

▷ **What if I file documents with the court in the future?**

If you file documents with the court in the future, be sure to use form DV-175 as a cover sheet and follow the instructions at the top of the form.

▷ **Is there a penalty for disclosing confidential information?**

Misusing or giving out confidential information can result in a fine of up to $1,000 or other court penalties. Confidential information may be given to the police to help them enforce the judge's order.

DV-160-INFO Privacy Protection for a Minor (Person Under 18 Years Old) Domestic Violence Prevention

▶Tips for Step 4: Give court papers to all parties in your case

In some cases, the judge will order you to serve your court papers. Look at form DV-165 to see what the judge decided.

What did the judge decide in your case?

The judge **granted** my request to keep some of the minor's information confidential.

Your papers must be served. Follow steps 1–5 below.

The judge **denied** (did not grant) my request to keep some information confidential. I **canceled** my request for a restraining order and there is **no other issue** in this case for a judge to decide on.

Your papers do not need to be served. You may stop here.

The judge **denied** (did not grant) my request to keep some information confidential. The **case is still open** because there are other issues for a judge to decide on, like divorce or custody.

If this is your situation, forms DV-160 and DV-165 must be served by mail or in-person. Follow steps 3–5 below.

◯ Step 1: Find out which papers you need to serve

The judge will check which papers you need to serve to the other parties in your case on form DV-165, item 13.

◯ Step 2: Find out whether you need to serve the other parties personally or by mail.

The judge will check how you need to serve your court papers to the other parties in your case on form DV-165, item 13.

If the judge checks item 13(a), you will need to have your server personally serve (give) your court papers to the other parties in your case.

If the judge checks item 13(b), you will need to have your server mail your court papers.

◯ Step 3: Choose a server

The person who serves your papers is called a server. Your server must be at least 18 years old, not protected by the restraining order, and not involved in your case. **You are not allowed to serve your own court papers.**

Some situations may be dangerous. Think about people's safety when deciding who you choose to serve your court papers.

A sheriff or marshal will serve your court papers for free. Another option is a process server.

A process server is a business you pay to deliver court papers. To hire a process server, look for "process server" on the internet or in the yellow pages.

◯ Step 4: Have your server give your court papers to all parties

For personal service, give your server your court papers as well as form DV-200.

For service by mail, give your server your court papers as well as form DV-250.

◯ Step 5: File proof with the court

The court needs proof that your papers were served. After your server completes form DV-200 or form DV-250, take it to the court to file in your case.

If the sheriff or marshal served your papers, they may use another form for proof instead of form DV-200. Make sure a copy is filed with the court and that you get a copy.

For more information, read form DV-200-INFO or ask your local court's self-help center for help.

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information (Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
1.	Family Violence Law Center By Cory Hernandez Staff Attorney	AM	1. We believe it would be beneficial for the CH-160-INFO and DV-160-INFO forms to include information on what the party may do if the court denies their sealing request.	1. The committees agree and have added the following language, "If the judge does not approve your request, you may have other legal options available to you. Visit your local court's self-help center or talk with a lawyer."
			2. We appreciate including contact information for various agencies and organizations providing social services and assistance.	2. No response required.
			3. In general, we like the drafted CH-160-INFO and DV-160-INFO forms. However, we have concerns that the average minor will not be able to fully understand the information. We believe the average reading level of an adult in this state is about 8th grade, and for a minor who's likely to go through this type of case, it'd be more like 5th grade. For instance, when discussing disability accommodations on page 2, we wonder whether the average minor would know what "accommodation" means.	3. The committees agree and have made changes to simplify the language. Most of the form is at a fourth-grade reading level. However, using the phrase "domestic violence restraining order" brings the reading level up to ninth grade. Given that the forms are referred to as "domestic violence restraining orders," the committees believe it is important to continue to use consistent terminology.
			4. On page 2, for both forms (CH-160-INFO & DV-160-INFO), in the paragraph, "My right to cancel restraining order," the forms should explain the consequences of cancelling the request.	4. The committees agree and have included this on the forms.
			5. On page 2, for both forms, we would recommend clarifying, in the "Self-Help center" paragraph, that self-help centers do not provide legal advice or representation, they just provide	5. The committees have changed the language on the forms to read, "Self-help center staff will not act as your lawyer but can give you

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information
(Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			information and help with completing some forms. 6. On page 2, in the last sentence of the "What If the judge approved (granted) my request?," the definition of "redacting" should be clarified to read: "Redacting means to hide (blacken or whiten out) the information so it cannot be seen." (Emphasis added to suggested edits/revisions.) 7. On page 2, in the first paragraph for "What if the judge denied (did not approve) my request?," it should be clear what the minor can do with that denial—e.g., petitioning for a writ or appealing the decision after the case is over. 8. In the second paragraph for this same section on page 2, there are some grammatical errors with commas missing, like after the word "denied" and between "public and except" toward the end of that sentence. Fixing this will help with readability.	information to help you decide what to do in your case." 6. The committees have made this suggested revision. 7. As stated above, the committees have added language to refer litigants to resources in order to explore potential legal remedies. 8. The committees have made these suggested revisions.
2.	Herman Paralegal Student District of Columbia Tracy, CA 95376	N	*This comment has been paraphrased to limit personal information from being released in the public record. Commenter recounted personal experience with the court system as a litigant in a domestic violence proceeding.	This comment is outside of the scope of this proposal.
3.	Superior Court of California,	A	Request for Specific Comments:	The committees appreciate the comments.

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information
(Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
	County of Los Angeles 111 N. Hill Street Los Angeles, CA 90012		Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose. Are the forms easy for users to understand? Yes, the forms are easy for users to understand. 1. Do you have any suggestions for improving their usability or readability? We suggest removing or rewording the section titled: "Does this request cost money?" The Request to Keep Minor's Information Confidential is free. 2. Should other information be included on the INFO sheets? We suggest providing information on when it would be appropriate to apply for a Guardian Ad Litem of a minor. 3. Also, we suggest adding under the Self-help Center section that they will not assist with redacting (blackening out) information.	1. In civil harassment cases, there are filing fees unless fees are expressly waived. The committee added a detailed explanation of the options for litigants in this section. 2. Under the section, "Who can make the request?" there is information about the possibility of the judge requiring an adult to help the minor with the request. This keeps the language simpler and therefore more accessible to minors, who are the target audience. 3. The committees considered this comment but decided not to make this addition because California Rules of Court, rules 3.1161 and 5.382 expressly require the court to decide who should be responsible for redaction, which includes whether the requesting party has immediate access to a self-help center. Self-help centers provide a number of services to self-represented litigants

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information
(Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			4. Should other resources be listed in the "Other help" section, on page 2? No other resources should be listed.	including drafting orders, explaining what orders mean, and how to comply with the orders. 4. No response required.
4.	Superior Court of California, County of Orange By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court Superior Court of California, County of Orange	NI	□ Privacy Protection for a Minor (Person Less Than 18 Years Old) (DV-160-INFO) 1. □ On page 1, revise the first sentence to, "A judge can make information about a minor confidential when issuing a domestic violence protective order". This would comply with Family Code section 6301.5, which references that the minor's information and circumstances surrounding the protective order may be made confidential. 2. □ On page 1, revise the sentence to, "If there is sensitive information about a minor that you do not want the public to see, you may ask a judge to make the information confidential." 3. □ On page 1, in the Complete the forms section, add "In addition to your DV-100, you will need to complete:" This sentence should indicate there are other restraining order forms that need to be filed.	The committees appreciate the thoughtful comments. 1. The committees agree that it should be made clear that information about a minor may be made confidential in a civil or domestic violence restraining order proceeding. The committees have revised this paragraph to the following, "**Can I keep information about a minor confidential?** Yes. In a domestic violence restraining order case, you can ask a judge to make information about a minor confidential." 2. In response to another comment, the committees have proposed new language in this paragraph. 3. Thank you. The committees have added language to make this point.

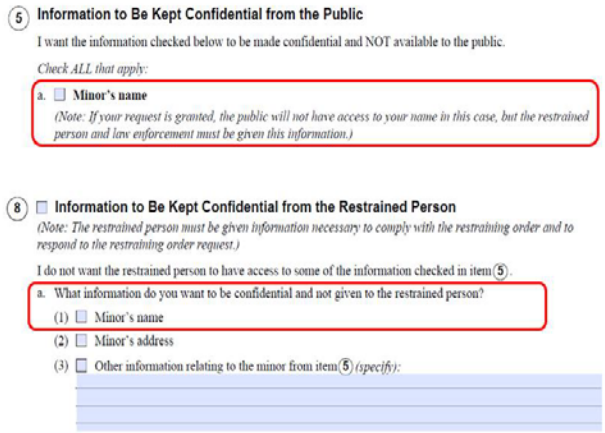
Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information
(Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			4. On page 2, in the My right to cancel restraining order section, update the sentence to read, "If you want to cancel your request upon denial, check the box on form DV-160, item 7(a) and DV-160, item 8(d)(1), if it applies."	4. In response to other comments, the committees have rewritten this paragraph to simplify the language and explain the effect of canceling a request for restraining order.
			5. On page 2, in the Self-help center section, update the sentence to read, "Find your local court's self-help center at www.courts.ca.gov/selfhelp.	5. The committees agree and have made this change.
			6. On page 2, in the What if the judge approved (granted) my request? section, it is recommended that the last sentence be revised to read: In limited situations, the judge may make information confidential from the other party in your case, if this is the case then box 9(b) would be completed by the judge.	6. The committees have made changes in line with this suggestion but with some simpler language to improve readability.
			7. Also, update the last sentence of the What if the judge approved (granted) my request? section to read: If the judge makes you responsible for redacting all the paperwork, your local self-help center or other legal assistance office may be able to assist you.	7. In many cases, redaction will have to happen quickly; therefore, the committees prefer referring litigants to court-based resources versus referring litigants to resources that may take more time to access or that they may not be eligible for.
			8. On page 2, the What if the judge denied (did not approve) my request section, update the sentence to read, "This means that anyone can go to your	8. The language was revised in line with the comment but with minor edits.

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

	Commenter	Position	Comment	Committee Responses
			local courthouse and ask to see the documents you filed in this case." 9. Also, update the last sentence to clarify that the court will not keep the remaining pages 2-5 of the form DV-165. Currently, the sentence reads that the public will only have access to page 1 of the DV-165 if the request is denied. 10. I wanted to provide a comment on the Request to Keep Minor's Information Confidential (DV-160). Section 5a of the form, indicates that the restrained person and law enforcement must be given the minor's name. However, that contradicts with section 8 of the form, which allows the person completing the form to request for the minor's name to be kept confidential and not given to the restrained person.  5 Information to Be Kept Confidential from the Public I want the information checked below to be made confidential and NOT available to the public. *Check ALL that apply:* a. ☐ **Minor's name** *(Note: If your request is granted, the public will not have access to your name in this case, but the restrained person and law enforcement must be given this information.)* 8 ☐ Information to Be Kept Confidential from the Restrained Person *(Note: The restrained person must be given information necessary to comply with the restraining order and to respond to the restraining order request.)* I do not want the restrained person to have access to some of the information checked in item 5. a. What information do you want to be confidential and not given to the restrained person? (1) ☐ Minor's name (2) ☐ Minor's address (3) ☐ Other information relating to the minor from item 5 *(specify):*	9. The committees do not believe that litigants need to know that pages 2 through 5 will not be filed. 10. The committees will note this suggestion for a future forms cycle.

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information (Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
5.	Superior Court of California, County of Orange Sean E. Lillywhite On behalf of the Civil, Small Claims and Probate division of Orange County Superior Court Administrative Analyst/Officer Training & Analyst Group (TAG)	NI	SPR19-38 Protective Orders: New INFO Form on Protecting Minor's Information The info sheet may need to further clarify how service works, as the 3rd party providing service of a restraining order may not be aware of the redaction orders. While not necessarily relevant to the INFO form here, some general guidance and language in regards to minor's confidentiality might be helpful on personal service forms.	Forms CH/ DV-170, *Notice of Order Protecting Information of Minor*, should be attached to the front of any unredacted document that needs to be served. This would also give the server notice that information has been made confidential.
6.	Superior Court of California, County of San Bernardino Executive Office	A	• Does the proposal appropriately address the stated purpose? 1. Yes • Are the forms easy for users to understand? 2. Yes • Do you have any suggestions for improving their usability or readability? 3. None • Should other information be included on the INFO sheets? 4. Include information on processing subsequent filings and use of DV-170 and DV-175	The committees appreciate the comments. The committees agree and have included this information.
7.	Superior Court of California, County of San Diego By: Mike Roddy, Executive Officer Central Courthouse	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Are the forms easy for users to understand? Yes. Q: Do you have any suggestions for improving their usability or readability?	The committees thank you for your comments.

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information (Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			Yes, see general comments. Q: Should other information be included on the INFO sheets? No, the information contained is sufficient. Q: Should other resources be listed in the "Other help" section, on page 2? No. It may be helpful to include language regarding Family Code § 3044 here, particularly to the extent custody/mediation will be scheduled, to ensure they have notice of the presumption pursuant to § 3044(h). The language regarding custody and limiting time with the child seems minimal. GENERAL COMMENTS: CH/DV-160-INFO: Page 2 Propose changing "Understand the Judge's Order" to "Understanding the Judge's Order."	The committees understand the importance of this language but recommend keeping the information on this form specific to the subject of minor's confidentiality. The committees decline to make this change, preferring that the heading of this section to parallel the titles of the other steps.
8.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	The JRS notes that the proposal is required to conform to a change of law.	No response required.
9.	Julie Camacho Court Manager, Family Law Superior Court of California, County of Ventura	A	Agree with the necessity of a new information sheet to assist filer's through this process and recommend the following modifications: CH-160-INFO –	

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information (Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			1. Page 1 in the box titled "What do I have to do to make the information about a minor confidential?	1. The committees believe that the current language, "What do I have to do to make information about a minor confidential?" is grammatically correct.
			2. Box #1 -Complete the forms – recommend adding language in the box if the party seeking confidentiality is also the person asking of the restraining order, they can submit the restraining orders forms simultaneously with the CH-160 request. Suggest adding: "If you are the party requesting a restraining order, you can make your request at the same time by completing forms CH-100, CH-109 and CH-110."	2. The committees agree and have incorporated the suggestion with edits to the language.
			3. Box #3 – Change the title of this box to "Read the judge's order" – this wording is easier for a self-represented party to understand (Same change is recommended for the DV-160-INFO)	3. Thank you for your comment. The committees agree with the importance of using words that are easier for self-represented litigants to understand. However, the committees believe it is important to stress the importance of understanding the orders and not just reading them. The orders may be complicated and not understanding the orders may lead to inadvertent disclosure of confidential information.
			4. Page 1 – paragraph titled "Does this request cost money?" – This section is confusing because it addresses the fees for filing the request for civil harassment restraining order, not the	4. The language has been modified to speak to the law regarding filing fees in civil harassment proceedings. The committees did not make the language specific to requests for confidentiality because a person may be filing

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

SPR19-38
Protective Orders: New INFO Form on Protecting Minor's Information
(Approve forms CH-160-INFO and DV-160-INFO)

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

	Commenter	Position	Comment	Committee Responses
			request to keep the minor's information confidential. Recommend that this is explained in the paragraph.	a civil harassment restraining order at the same time as the request for confidentiality.
			5. Page 2 of the form should be worded in a fashion that addresses a request made by the party asking for the restraining order as well as the responding party. Paragraph 2 could be re-worded to address this issue: "If you are the party requesting the restraining order and the judge does not approve your request to keep certain information confidential…"	5. The committees agree and have suggested changes to language consistent with this suggestion with minor modifications.
			6. Page 2 – paragraph titled "What if the judge denied (did not approve) my request?" - recommend changing to state "It means that information in this case 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."	6. The committees agree and have suggested changes to language consistent with this suggestion with minor modifications.
			7. In addition, move paragraph 2 regarding the petitioning party's right to cancel the restraining order request after this paragraph.	7. The committees do not agree with this suggested revision because the person seeking a restraining order must decide at the time of completing CH/DV-160 whether they want to cancel their request for restraining order in the event the request for confidentiality is denied. Information regarding the right to cancel has been added to the form.

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

Item number:39

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 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:
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: October 19, 2018
Project description from annual agenda: Item 1 on annual agenda (Legislative Changes from the 2017-2018 Legislative Session)
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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 23–24, 2019

Title
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases

Rules, Forms, Standards, or Statutes Affected
Adopt forms DV-117 and DV-210; approve form DV-205-INFO; revise forms DV-200-INFO and DV-250

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 14, 2019

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting two forms, approving one information form, and revising an information form and one other form 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.

Recommendation

The Family and Juvenile Law Advisory Committee recommends the following, effective January 1, 2020:

1. Adopt form DV-117, *Order Granting Alternative Service*, and form, DV-210, *Summons (Domestic Violence Restraining Order)*;

2. Approve form DV-205-INFO, *What if the Person I Want Protection From is Avoiding (Evading) Service?*;

3. Revise form DV-200-INFO, *What is "Proof of Personal Service"?*; and

4. Revise form DV-250, *Proof of Service by Mail.*

The new and revised forms are attached at pages 7–15.

Relevant Previous Council Action

In 2016, form DV-200-INFO was revised to implement the provisions in AB 1081 (Stats. 2015, ch. 411), which broadened and clarified the grounds for granting a continuance, excised the concept of "reissuance" of a protective order from the statutes, and clarified that a temporary restraining order may be extended to a new hearing date without first having to be "dissolved by the court." No previous council action has been taken on the other three forms included in this proposal, which are being proposed for the first time.

Analysis/Rationale

This proposal implements newly enacted law by providing forms for the public and courts to use. These forms are necessary to ensure that litigants representing themselves have access to the relief provided under Family Code section 6340(a)(2), and to provide consistency in court processes and orders statewide.

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 the 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. The form is also completely bilingual in Spanish.

Adopt form DV-117, *Order Granting Alternative Service*

The committee recommends adopting form DV-117, a one-page attachment that would be used when a court grants a request for alternative service. In the Invitation to Comment, the committee recommended revising the continuance order (form DV-116) to include additional methods for service in the Service of Order section. One commenter suggested that this information be on a separate form since alternative methods of service will not apply in a majority of cases. The committee agrees with the commenter and recommends adopting form DV-117 for this purpose.

On form DV-117, the court would specify the (1) deadline for service, (2) papers to be served on the restrained party, and (3) method for service. The form, at item 2, also includes the findings required for the court to grant alternative service. The findings are included at item 2, instead of item 1, so that the specific orders relating to service are more prominent for the protected party.

Approve new information form DV-205-INFO

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;
- What a litigant would need to show the court to qualify for alternative service; and
- Some examples of alternative methods of service.

Revise information form on personal service (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:

- Reformatting the form so that the information is presented in two columns. This is consistent with the formatting used in other information forms and also makes the form easier to read by creating shorter lines of text.
- Including graphics to represent key concepts, like personal service and avoiding service.
- Using plain language.

- Reorganizing content into steps the litigant must take to accomplish service.
- Including an advisement on possible safety issues that could be present at the time of service.

The revisions are recommended to improve the usability of the form.

Revise form DV-250

At item 4, on form DV-250, the committee proposes a minor change to strike the following sentence, "*Note: You cannot serve DV-100, DV-105, DV-109, or DV-110 by mail.*" This sentence is inconsistent with the new laws on alternative service which may involve service by mail of the DV-100, DV-109, DV-110, and any other attachments to these forms. This change was not proposed in the Invitation to Comment, but the committee believes that this change is a minor substantive change that is unlikely to generate controversy and proposes to make the change without public comment consistent with California Rules of Court, rule 10.22(d)(2).

Policy implications

There are no policy implications for this proposal.

Comments

Twelve commenters responded to this proposal, including five courts: the Superior Courts of Los Angeles, Orange, San Bernardino, San Diego, and Ventura Counties. Other commenters are the Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee; the Director of Domestic Violence Clinic, University of California, Irvine School of Law; the Family Violence Law Center; the Executive Committee of the Family Law Section of the California Lawyers Association; the Harriett Buhai Center for Family Law; and the Orange County Bar Association.

Five commenters agreed with the proposal, five agreed if modified; and two did not indicate a position but suggested modifications. No commenter opposed the proposal. Most modifications proposed by commenters were incorporated. Some issues received more than one comment and are described below.

Whether to create a new request form or revise DV-115

One commenter suggested that a request for an alternative service form be created because form DV-115 is too general and should contain specific questions to elicit the information needed for the court to allow for service by alternative means. Another commenter suggested including more specific questions on form DV-115 to elicit information needed. The committee agrees that form DV-115 is not the right form to be used by itself to elicit the information needed for a request to serve by alternative means. In cases where a petitioner wants to serve by publication or posting, the committee notes that there are existing family law forms available for these requests that can be used in domestic violence restraining order proceedings, and form DV-205-INFO refers people to these forms. In the future as time and resources permit, the committee will consider whether to propose a request for an alternative service form.

Advisal regarding consequences of restraining order on *Summons* (form DV-210)

A few commenters suggested modifying the language regarding the consequences of a restraining order. Some suggested including more examples of the types of orders that could be included in a restraining order (stay away, no contact orders, spousal support, financial support, attorney's fees). One commenter stated that some of the language is unnecessary and that it may be suggesting that the respondent should fight the restraining order.

The committee decided against including more examples of potential orders because the committee believes that the language circulated for public comment does a good job of putting the restrained party on notice of the potential consequences of failing to appear for a restraining order hearing. The committee does not agree that the language may be suggesting that the respondent should fight the restraining order but believes that it is sufficient to put the restrained party on notice of the possible consequences for not going to their court date.

Bilingual *Summons* form

Two commenters made suggestions on the layout of the form and how it could be improved to provide access to the Spanish translations. One commenter suggested creating a separate Spanish version because the first page is hard to read with both English and Spanish. The other commenter suggested including both English and Spanish information on one page. Based on these comments, the committee reorganized the two-page form so that each side is fully bilingual while also creating more white space so the form is easier to read; the information that is most important is on page 1.

Alternatives considered

As noted above, committee considered a commenter's suggestion to have a separate Spanish version of form DV-210 and not include Spanish translations on the English version of form DV-210 because the translations made the form crowded and hard to read. The committee did not accept the suggestion but did reformat the form so that the content is easier to read.

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 and possibly decrease the number of hearings needed in cases where personal service has been unsuccessful.

Attachments and Links

1. Forms DV-117, DV-210, DV-250, DV-200-INFO, and DV-205-INFO, at pages 7–15
2. Attachment A: Chart of comments on proposal SPR19-39, at pages 16–42
3. Link A: Assembly Bill 2694 (Stats. 2018, ch. 219), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2694*

DV-117 Order Granting Alternative Service

Case Number:

This form is attached to (check one): ☐ DV-116 ☐ Other: _____

1 Serving the Restrained Party

Protected party: You must have the restrained party served by following the orders below.

(a) **Deadline:** You must serve the restrained party by *(date)*: _____

(b) **Papers to Serve** *(check all that apply)*:

(1) ☐ A copy of this order, including form DV-116
(2) ☐ Form DV-210
(3) ☐ All the documents indicated on form DV-109, item ⑥
(4) ☐ Other:

(c) **How to Serve Papers**

(1) ☐ **Substituted Service**

(A) ☐ **Home or mailing address**: You must have your server (1) leave a copy of all the papers listed ①b at the restrained party's home or usual mailing address with an adult that lives there, and (2) mail a copy to the restrained party to the same address.

(B) ☐ **Workplace**: You must have your server (1) leave a copy of all the papers listed in ①b at the restrained party's workplace with someone who seems to be in charge, and (2) mail a copy to the restrained party at the same workplace.

(2) ☐ **Publish in a newspaper**

(A) You must have form DV-210 published at least once a week for 4 weeks in a row with the newspaper listed here: _____

(B) If you find an address for the restrained party while form DV-210 is published in the newspaper, you must have someone mail all the papers listed in ①b to that address.

(3) ☐ **Post papers at the courthouse**

(A) You must have your server post form DV-210 for 28 days in a row at the courthouse located at *(address)*: _____

(B) You must have your server mail a copy of the papers listed in ①b to the restrained party's last known address: _____

(C) If you find an address for the restrained party, you must have your server mail all the papers listed in ①b to that address.

(4) ☐ **Other**: _____

For more information on alternative service, read form DV-205-INFO, What if the Person I Want Protection from is Avoiding (Evading) Service?

2 Findings That Support This Order

(a) The protected person has made diligent efforts to have the restrained party personally served but has been unsuccessful.

(b) There is reason to believe that the restrained party is avoiding (evading) service.

This is a Court Order.

DV-210 Summons (Domestic Violence Restraining Order) Citación (Orden de restricción de violencia en el hogar)

If ordered by a judge to use this form, complete items (1), and (2) only. (Spanish)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT August 6, 2019

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.

— The court will complete the rest of this form —
— El tribunal llenará el resto de este formulario —

(3) You have a court date
[Spanish]

Name and address of court, if different from above:
Nombre y dirección de la corte, si no es la misma de arriba:

Date Fecha: _____
Time Hora: _____
Dept. Depto.: _____
Room Sala: _____

_____
_____
_____

What if I don't go to my court date?

If you do not go to your court date, the judge can grant a restraining order that limits your contact with the person in (1). If you have a child with the person in (1), the court could make orders that limit your time with your child. Having a restraining order against you may impact your life in other ways, including preventing you from having guns and ammunition. If you do not go to your court date, the judge could grant everything that the person in (1) asked the judge to order.

Insert Spanish translation

How do I find out what the person in (1) is asking for?

To find out what the person in (1) is asking the judge to order, go to the courthouse listed at the top of page 1. Ask the court clerk to let you see your case file. You will need to give the court clerk your case number, which is listed above and on page 1. The request for restraining order will be on form DV-100, *Request for Domestic Violence Restraining Order*.

Where can I get help?

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.

Do I need a lawyer?

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.

Content above translated into Spanish

[seal]
[sello]

Date (Fecha): _____ Clerk, by (Secretario, por): _____, Deputy (Asistente)

DV-250 Proof of Service by Mail

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

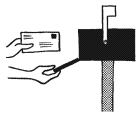
1 Name of Person Asking for Protection:

2 Name of Person to Be Restrained:

3 Notice to Server

The server must:

- Be 18 years of age or over.
- Not be listed in items 1, 2 or 3 of form DV-100, *Request for Domestic Violence Restraining Order.*
- Mail a copy of all documents checked in 4 to the person in 5.



4 I (the server) am 18 years of age or over and live in or am employed in the county where the mailing took place. I mailed a copy of all documents checked below to the person in 5:

a. ☐ DV-112, *Waiver of Hearing on Denied Request for Temporary Restraining Order*
b. ☐ DV-120, *Response to Request for Domestic Violence Restraining Order*
c. ☐ FL-150, *Income and Expense Declaration*
d. ☐ FL-155, *Simplified Financial Statement*
e. ☐ DV-130, *Restraining Order After Hearing (Order of Protection)*
f. ☐ Other *(specify):* _____

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

a. Name of person served: _____
b. To this address: _____
City: _____ State: _____ Zip: _____
c. Mailed on *(date):* _____
d. Mailed from: City: _____ State: _____

6 Server's Information

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

If you are a registered process server:

County of registration: _____ Registration number: _____

7 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*

DV-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your court papers to the other party in your case. There are different ways to serve the other party: in person, by mail, and others.

Why do I have to serve my legal papers?

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. 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, known as a server, personally delivers your court papers to the other party.

In most cases, these forms must be served to the other party by personal service:

- Form DV-109;
- Form DV-100;
- Form DV-110;
- Form DV-120 (leave this form blank);
- Form DV-120-INFO; and
- Form DV-250 (leave this form blank).

Who can serve?

Any adult who is not protected by the restraining order can serve your court papers. **You cannot serve your own court papers.**

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 court papers 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.

How do I have my court papers served?

◯ Step 1: Choose a server

The person who gives your court papers to the other party is called a server. Your server must be at least 18-years-old. They must not be protected by the restraining order or involved in your case. This means that you cannot serve your own court papers.

◯ Step 2: Have your server give your court papers to the other party

Give your server these instructions:

❶ Before you serve the forms, note which forms you have, including the name of the form and the form number. See form DV-200 for a list of forms.

❷ Find the person you need to serve. Make sure you are serving the right person by asking the person's name.

❸ 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.

❹ Fill out form DV-200 completely and sign.

❺ File form DV-200 with the court or give form DV-200 to the person who is asking for the restraining order so they can file it.

◯ Step 3: File proof with the court

The court needs proof that service happened and that it was done correctly. If your server was successful, have your server fully complete and sign form DV-200. **The person you want restrained does not sign anything.**

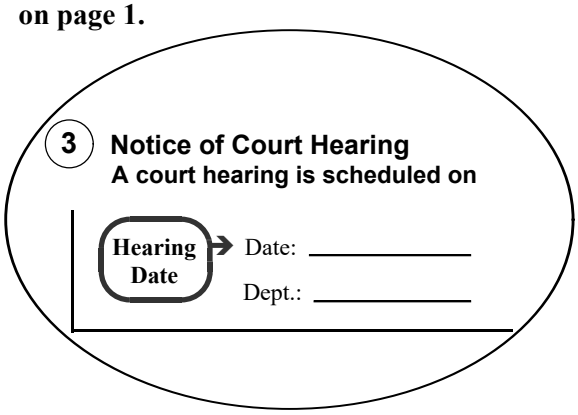
Take form DV-200 to the court to file in your case as soon as possible. This information will automatically go into a restraining order database that police have access to.

If the sheriff or marshal served your court papers, they may use another form for proof besides form DV-200. Make sure a copy is filed with the court and that you get a copy.

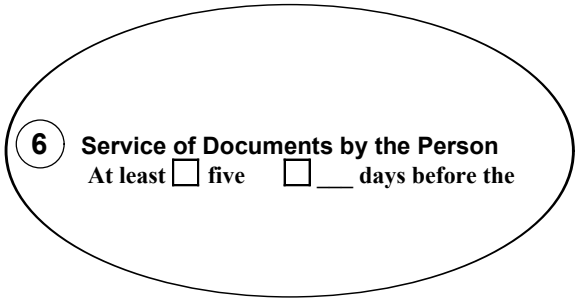
When is the deadline to serve my court papers?

It depends. To know the exact date, you need to look at two items on form DV-109. Follow these steps:

◯ **Step 1: Look at the court date listed under 3 on page 1.**



◯ **Step 2: Look at the number of days written in 6 on page 2.**



◯ **Step 3: Look at a calendar.** Subtract the number of days in 6 from the court date. That's the deadline to have your court papers served. It's okay to serve your court papers before the deadline.

If nothing is written in 6, you must have your court papers served at least five days before your court date.

What happens if I can't get my court papers served before the court date?

You will need to ask the court to reschedule (continue) your court date. Fill out and file form DV-115 and form DV-116. These forms ask the judge for a new court date and to make any temporary orders last until the end of the new court date.

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 keep a copy of form DV-115, form DV-116, and a copy of your original paperwork. That way, the police will know your orders are still in effect.

For more information on asking for a new court date, read form DV-115-INFO.

What if the other party is avoiding (evading) service?

If you've tried many times to serve the the restrained person, and you can show the judge that the restrained person is avoiding (evading) service, you may ask the court to allow you to serve another way. If you want to make this request, at your first court date tell the judge details about your attempts to have the restrained person served. 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.

DV-205-INFO What if the Person I Want Protection From is Avoiding (Evading) Service?

Why do I have to serve the restrained person?

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. This is called personal service. See form DV-200-INFO for more information.

What if I already have a domestic violence restraining order?

If a judge granted you a domestic violence restraining order on form DV-130, alternative service is not an option for you. 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 about what the judge ordered in your case, see page 3 for where to get legal help.

What if I can't personally serve the restrained person?

When you cannot personally serve the restrained person with a copy of form DV-100 and related papers, a judge may allow you to give, or serve, the restraining order papers another way. This is called alternative service. The judge could order you to have your server give the restrained person your court papers in more than one way. To qualify for alternative service, you must show the judge at least two things.

❶ You have tried many times (usually 3 or more times) to have someone personally serve the restrained person.

Some examples of ways you can try to have the restrained person personally served:

- Serve the restrained person at home, their workplace, or somewhere they go a lot.
- Search online for where they may be located.
- Check with their 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 your papers, and they will do it for free.

❷ You believe the restrained person is avoiding (evading) personal 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 a 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.

Alternative service may involve other people having access to your court papers.

This will mean they can see 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.

DV-205-INFO What if the Person I Want Protection From is Avoiding (Evading) Service?

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.

❶ Leave a copy and mail a copy to the restrained person's home, mailing address, or workplace

If you have the restrained person's home, mailing (not a PO box), or workplace address, this type of service requires your server to follow these steps:

❶ Give the papers to someone 18 years or older who lives at the restrained person's home or mailing address, or who appears to be in charge at the restrained person's workplace;

❷ Get the name of the adult who got the papers, and tell the adult that the papers are for a request for a restraining order against the restrained person;

❸ Mail the papers to the restrained person's home, mailing, or workplace address;

❹ Completely fill out form POS-010; and

❺ 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.

This type of service is called "substituted service." Check with your local self-help center or a lawyer to find out how to make this request. Your court may have forms that you can complete to make this request.

❷ Publish in a newspaper

You would have to pay a newspaper to run a copy of form DV-210 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 the forms listed below and take them to the courthouse to file.

- Form FL-980; and
- Form DV-210, items 1 and 2.

If the judge grants your request, follow the orders made by the judge. Usually these orders are made on form FL-982.

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 newspaper 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.

❸ Post in courthouse

If you do not have money to pay a newspaper to publish your papers, you could ask the judge for permission to post a copy of form DV-210 in a courthouse. To be eligible, you have to qualify for a fee waiver. To make a request to post your court papers in a courthouse, complete the forms listed below. Take the completed forms to the courthouse to file.

- Form FW-001;
- Form FL-980; and
- Form DV-210, items 1 and 2.

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 or ask the court clerk) to post form DV-210 for you in the location approved by the judge for at least 28 days. After it has been posted for the required number of days, have your server completely fill out form FL-985 and form DV-250. Take both forms to the courthouse to file in your case.

DV-205-INFO What if the Person I Want Protection From is Avoiding (Evading) Service?

May I serve by email or electronically?

To serve someone electronically, like by email 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 email 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.

Where can I 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 your local self-help center, go to *www.courts.ca.gov/selfhelp*.

Where can I find other help?

For safety tips or other help, call the National Domestic Violence Hotline at 1-800-799-7233; TDD: 1-800-787-3224.

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
1.	California Lawyers Association, Executive Committee of the Family Law Section By Saul Bercovitch, Director of Governmental Affairs California Lawyers Association 400 Capitol Mall, Suite 650 Sacramento, CA 95814 916-516-1704 saul.bercovitch@calawyers.org	A	FLEXCOM agrees with this proposal and offers the minor suggestions below for the Family and Juvenile Law Advisory Committee's consideration. 1. As to form DV-210, the Committee may wish to consider whether it would be advisable to augment the existing third bulleted paragraph under section (2), which currently reads "Having a restraining order against you may impact your life, including preventing you from having guns or ammunition." Our suggestion is to augment the sentence with the underlined language, so it would read, "Having a restraining order against you may impact your life, including preventing you from having guns or ammunition, or from obtaining or maintaining certain jobs or licenses." 2. As to form DV-205-INFO, we offer the suggestion of adding the parenthetical "(an adult not protected by the restraining order)" after the word "someone" in the first paragraph on page 1, entitled "Why do I have to serve the other party?" 3. In the language of enumerated paragraph 5 under the two sections that begins "Leave a copy and mail a copy…" we offer the suggestion of having the	1. The committee thanks the commenter for this response but does not believe this statement is appropriate without having a statutory basis for including it. While it may be harder for a person restrained by a protective order to obtain employment that requires the possession of a firearm, the Domestic Violence Prevention Act does provide an exemption for firearms for work purposes if certain criteria can be met. 2. The committee thanks the commenter for the suggestion. Because the purpose of the paragraph is to explain why service is needed the committee does not believe that the suggested language, which refers to a requirement for service, should be included. Instead, the committee proposes changing the last sentence to "See form DV-200-INFO for personal service requirements." 3. The committee has reorganized these sections so that some of the information is clearly directed at the server as instructions for the server.

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

	Commenter	Position	Comment	Committee Responses
			language read "File form POS-010 with the court or give the completed form to you so you can file it with the court." This is suggested because the rest of the instructions are already directed to the person seeking the restraining the restraining order, and use the term "you."	
2.	Family Violence Law Center By Cory Hernandez Staff Attorney 470 27th St. Oakland, CA 94612 510-208-0220 chernandez@fvlc.org	AM	1. Since the Council is updating the DV-200-INFO form to discuss alternative methods of service, why not the DV-700-INFO form as well? While some of us believe the new law (AB 2694) applies only to the TRO/DVRO stage, and not renewals, we all still believe alternative methods of service are allowed for renewals. 2. We strongly believe all of these forms need to be available in Spanish and, if possible, other languages, as well. 3. For proposed DV-210 (Summons), we are generally agreeable to the idea of the form and most of its contents, and we appreciate the goal of complying with CCP section 412.20 while also excluding unnecessary and sensitive information of the case. We are split on whether to include a statement saying the restraining order may affect the respondent's life. Some of us think the language is unnecessary, unduly provocative (e.g., "the court could make orders that limit your time with your child"), and somewhat entering the territory of suggesting or recommending the respondent	1. The committee will consider this request in a future cycle. 2. The committee agrees. Forms are translated with available resources. Staff will look into the possibility of translating these forms. 3. Thank you for your comment. The committee does not agree that the language may be suggesting that the respondent should fight the restraining order. The committee believes the language, as proposed in the *Invitation to Comment*, does a good job of providing the restrained party with the possible consequences of not appearing at the court date.

	Commenter	Position	Comment	Committee Responses
			should fight the restraining order. Others like language along this line to make it clear the ramifications of having a restraining order against you. We would suggest being very cautious with this type of language, and really thinking about what statutory authority allows the Judicial Council to include such language, and the reasons the committee wants to add this. If the committee decides to keep some of this language, which on the Summons is the third dot in the dot-list under item 2, then we would suggest better, clearer language, like: "Having a restraining order against you may impact child custody and visitation, spousal support, and your right to possess guns and ammunition."	
			4. The Spanish translations need to be on a separate form. As the draft stands now, the form is very hard to read with two languages, and can be very confusing very fast to unrepresented litigants.	4. The committee believes that having a fully bilingual summons form is important but agrees that the draft included in the *Invitation to Comment* is hard to read because it has too much information on the first page. The committee has revised the proposed form to include more information on the second page while including more important information on the first page.
			5. The fourth dot in the dot-list (dot-list is better than "bullet list" because it's less violent) under item 2 is missing a comma after "the judge to order."	5. The committee has made this revision.
			6. The fifth dot in item 2's dot-list should clarify that self-help centers *do not provide legal advice*	6. The committee does not believe that this level of detail is needed. The goal of this

	Commenter	Position	Comment	Committee Responses
			or representation, they just provide information and help with completing some forms.	form is notify the restrained person that someone wants a restraining order against them. In the event that they do not understand what the summons means, the summons refers them to a self-help center so that they can learn what the paperwork means. It is the practice of self-help center staff to inform customers of the center's ability to provide information and legal options only, and not advice. If the restrained person later decides that they want to hire a lawyer, the restrained person will be entitled to one continuance to do so.
			DV-205-INFO. 7. There should be added the same statement and information from the first page of the DV-200-INFO form under "Who can serve?" outlining, "Any adult who is not protected by the restraining order . . . ."	7. The committee thanks the commenter for the suggestion. Because the purpose of the paragraph is to explain why service is needed the committee does not believe that the suggested language, which refers to a requirement for service, should be included. Instead, the committee proposes changing the last sentence to "See form DV-200-INFO for personal service requirements."
			8. On the first page of this form, the penultimate sentence of the "How do I make a request for alternative service?" section should add "or attorney" after "an advocate."	8. The committee has made this revision.

	Commenter	Position	Comment	Committee Responses
			9. On the second page of this form, in the section of "What are some examples of alternative service?" the second sentence should be revised to read (emphasis added for revisions): "A judge could order **service on the restrained party** in more than one way."	9. Thank you for your comment. The committee has revised the sentence to "The judge could order you to have your server give the restrained person your court papers in more than one way" to make more clear that someone else, not petitioner, must serve the court papers.
			10. And third and fourth sentences should be added to state: "This service cannot be done by you or anyone listed on your restraining order. This service must be done by another adult of your choice." This way the person reading this doesn't think they are the one who can or will do the service, which is not allowed.	10. The committee agrees that the language on the form should make clear that service cannot be done by the party.
			11. On the third page of this form, in the section "Post in the courthouse," remove the sentence, "To be eligible, you have to qualify for a fee waiver." Because this is not true. We have used posting at a courthouse, and other methods of service, without needing to get a fee waiver first. And fees are not required in DVPA proceedings.	11. The committee acknowledges that filing fees are not required in domestic violence restraining order cases under Fam. Code section 6222. However, the council has previously adopted rule 5.72 which requires a determination of financial eligibility for service by posting. Because posting may provide less widespread notice than publication, posting is only available when the requesting party can prove an inability to pay. The method for determining financial eligibility for posting is the same as that for waiving court filing fees through submission of a fee waiver application (FW-001). Courts also have

	Commenter	Position	Comment	Committee Responses
				the discretion to order another form of service.
			12. On this same page, in this same section, the penultimate sentence should be revised (emphasis added): "After it is posted **for the time ordered by the judge**, have your server . . . ."	12. The committee accepts the suggestion but has used different language to convey the same meaning.
			13. On the third page of the form, in the "May I serve by e-mail or electronically?" we would recommend making this a broader question of "May I serve by other means, such as e-mail?" And we would recommend removing the first sentence, because we don't believe the person being served is first required to consent to being served by e-mail. Moreover, we have seen in our practice judges allowing other methods of service, usually with one of the types you've listed in the form (like posting and serving by mail), such as personal service on respondent's family who reside in the same home, or service by email.	13. The committee does not agree with this revision. This paragraph is only meant to explain that electronic service, without consent to receive notice electronically by the opposing party, would be insufficient service. See Code of Civil Procedure. 1010.6 and rule 2.251.
			DV-200-INFO. 14. On the first page of this form, under "What is 'personal service'?," the list seems to be missing DV-120 (blank), DV-120-INFO, the firearm relinquishment forms, etc.	14. The committee has added forms DV-120, DV-120-INFO and DV-250 to this list. These forms are required for service as listed on form DV-109, *Notice of Court Hearing*.
			15. On the second page of this form, the bottom of the page's section, "Instructions for Server," is easy to miss but very important, so maybe should be bolded more, larger font, boxed in,	15. The committee agrees and has made revisions to this section.

	Commenter	Position	Comment	Committee Responses
			accompanied by a graphic, and/or something else. In that same section on that page there is also an extra comma in the penultimate dot in the dot-list.	
3.	Harriett Buhai Center for Family Law By Rebecca L. Fischer Staff Attorney 3250 Wilshire Boulevard, Ste 710 Los Angeles, California 90010 Telephone (713) 388-7505	AM	The Harriett Buhai Center for Family Law wholeheartedly supports modifying the rules and forms to address alternative service in DVPA cases. 1. Does the proposal appropriately address the stated process? In general, yes. 2. Are the forms easy for users, especially self-represented litigants, to understand? Yes, see comments below. 3. Do you have any suggestions for improving their usability or readability? DV-210 Summons: A clearer break between items 2 and 3 indicating the court will complete the form below the line 4. DV-205-INFO: Add a clear statement that the litigant should not attempt any form of alternative service until the judge orders the litigant to do so.	Thank you for submitting comments to this proposal. 1. No response required. 2. See below for the committee's responses to comments. 3. The committee has made this revision. 4. Thank you for the comment. The committee did not accept this suggestion. In some cases, a litigant may choose to notify the opposing party in ways which may not be sufficient to prove notice but could result in the opposing party

	Commenter	Position	Comment	Committee Responses
				appearing for the court date. Because some litigants might use this as a strategy the committee did not include the suggested language.
			5. Should other information be included on the new forms (DV-205-INFO and DV-210)? DV-210 Summons: • N/A	5. No response required.
			6. DV-205-INFO: Clarify whether the alternative means of service listed on DV-205-INFO will be available as an option if a litigant has attempted personal service of a Restraining Order After Hearing (DV-130) as ordered in item 25(b)(2) and has been unable to do so or specifically state that the alternative means of service are only available for service of temporary restraining orders. Whether or not the Respondent was served with the temporary order by alternative means or was personally served, a litigant ordered to personally serve the Respondent with the ROAH may look to the DV-200-INFO form for instructions on personal service, and, if the Respondent is evading service at that stage, tum to the DV-205-INFO as suggested by the form. The forms should make it very clear when the alternative means of service are an acceptable alternative for personal service of restraining orders	6. This information is already included on the form on page 2.

	Commenter	Position	Comment	Committee Responses
			and when the alternative means of service cannot be used. Other comments: 7. If posting is listed as an option for an alternative means of service, it may be helpful to consider modifying the Judicial Council posting forms to recognize this potential use or provide an information sheet on applying for posting under these circumstances. 8. In addition, there seems to be an issue in requiring fee waiver eligibility for permission to serve by posting in a DVPA case. In a DVP A case, a litigant's indigence or ability to pay is not an issue considered for other means of service, such as personal service by a sheriff or marshal. There may be any number of litigants who do not qualify for a fee waiver, but cannot afford to publish in a newspaper. Requiring a litigant to save up money to serve a DVP A action by publication or requiring a hearing on the litigant's financial circumstances as contemplated by FL-982 runs contrary to the goals of the DVPA.	7. The committee will consider this suggestion in the future. 8. The committee acknowledges that filing fees are not required in domestic violence restraining order cases under Family Code section 6222 and service for DVPA matters is waived under Government Code section 6103.2(b)(4). However, under rule 5.72 a determination of financial eligibility for service by posting is required in family law matters. Because posting may provide less widespread notice than publication, posting is only available when the requesting party can prove an inability to pay. The method for determining financial eligibility for posting is the same as that for waiving court filing fees through submission of a fee waiver application (FW-001). The committee notes that courts also have the discretion to order other means of service.

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
			9. Additional language in item 2 on page 1 of DV-205-INFO to clarify avoiding/ evading service. For litigants representing themselves, examples of evading or, more critically, what would be considered not evading service. For example, will alternative service through this process be an option for a litigant who, after due diligence, simply cannot find the Respondent?	9. The committee did not include any examples of avoiding service as this requirement seems straightforward.
4.	Orange County Bar Association By Dierdre Kelly, President P.O. Box 6130 Newport Beach, CA 92658	A	Does the proposal appropriately address the stated purpose? Yes. Are the forms easy for users, especially self-represented litigants, to understand? Yes. Do you have any suggestions for improving their usability or readability? No. Should other information be included on the new forms (DV-205-INFO and DV-210)? No. Should other resources be listed in the “other help” section, on page 2? No.	Thank you for your comments. No responses required for the comments submitted.

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
5.	Janani Ramachandran Judicial Extern for Judge Tara Flanagan; Berkeley Law Student	AM	My name is Janani Ramachandran, judicial extern to Judge Tara Flanagan and student at Berkeley Law. I have conducted extensive research on the matter of alternative service in DVROs, and submitted by e-mail my report, including the sample forms I designed. If you have any questions about my comments, you can contact me at jananir92@berkeley.edu. I find that the new DV-210 Summons, the DV-205-INFO, and the edited DV-200-INFO are informative and helpful to the self-represented petitioner, but that those forms alone are insufficient to effectively implement alternative service. 1. My primary comment is that a motion for alternative service form is lacking, which I have created in my sample e-mailed forms. The proposed DV-205-INFO suggests that the DV-115, request to continue, could be instead used to make the request, but I believe that form is too general to be applied here. Having a form motion would enable petitioners be prepared to thoroughly express their arguments to a judge as to why alternative service is needed in their situation. A motion that details the various possible methods by which to try to identify the respondent's whereabouts may also provide petitioners inspiration to pursue those methods prior to seeking alternative service. The sample motion form I created encourages petitioners to attempt a variety of methods of locating the respondent before requesting	1. Thank you for your comment and research on this topic. The committee will consider whether a request for alternative service should be created in the future. Such a form would need to go out for public comment. The committee agrees that form DV-115 should not be revised so that it alone could be used to make a request for alternative service. This is not to say that form DV-115 could not be used together with other available forms.

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

	Commenter	Position	Comment	Committee Responses
			alternative service. This includes having the respondent contacted at their home, workplace, by phone or social media, or through friends and family. Ensuring that the petitioner has attempted a variety of methods to have the respondent personally served helps address fears that petitioners can use alternative service to bypass procedural safeguards to protect the respondent's due process rights. It also helps ensure that abusive partners, who file DVRO petitions against their victims as a tactic of litigation abuse, are not using alternative service to manipulate a victim's access to courts and thwart their opportunity to be heard. In addition, the form is written in relatively straightforward language in recognition of the fact that most DVRO petitioners are self-represented and may not have an understanding of fundamental legal processes. Below are additional comments about the proposed forms: 2. Comment on DV-210 Summons: The form should contain stronger language that informs the respondent what the consequences of their failure to appear at court can include. I suggest something along these lines: "NOTICE: A petition for a domestic violence restraining order has been filed against you. You must appear in family court on the date listed above. Failure to appear could result in the court issuing a domestic violence restraining order against you for up to five years. This will require you to stay away from and cease contact with Petitioner and other	2. The committee thanks you for your comment but does not agree with the suggested language. The committee believes that the language, as proposed, provides enough information to put the restrained party on notice of the possible consequences of not appearing at the court date and directs the person to the courthouse to find out about the details of their case.

	Commenter	Position	Comment	Committee Responses
			protected parties, and prohibit you from being present in certain areas. A restraining order may have a variety of other consequences for you including your rights to child custody and visitation, ability to remain in a home shared with Petitioner, obligations to pay Petitioner financial support and attorney's fees, ability to possess firearms, and requirement to attend batterer-intervention classes. Failing to appear can waive your constitutional right for an opportunity to be heard." 3. Comment on DV-205-INFO: Electronic service - Under the first table, "Am I eligible to serve in another way," I would add more exhaustive methods by which a petitioner can try to personally serve the respondent or identify their whereabouts. This can include using the Respondent's social security number and date of birth, if known, to run a Service Members Civil Relief Act (SCRA) web search to find out if Respondent is currently in the military at https://scra.dmdc.osd.mil/. It can also include running a search on the online Federal Bureau of Prisons Inmate Locator (https://www.bop.gov/inmateloc/) and the CDCR Inmate Locator (https://inmatelocator.cdcr.ca.gov/search.aspx) to find out if Respondent is currently incarcerated.	3. The committee thanks the commenter for the suggestion. In order to qualify for alternative service, the petitioner, in addition to making diligent efforts to serve, must also show that the person is avoiding (evading) service. If a person is incarcerated or in the military, it is unlikely that the petitioner would be able to show that the person is avoiding service. The committee also notes that while the petitioner must show diligent efforts, this does not mean that the petitioner must perform an exhaustive search for the respondent. The court will be best able to decide what satisfies due diligence on a case-by-case basis.
6.	Superior Court of California, County of Los Angeles 111 N. Hill Street Los Angeles, CA 90012	AM	1. Proposed Modifications Form DV-210 Below the title in the section where it indicates "Complete items 1 and 2 only" – Change the Spanish translation from "puntos" to "articulos"	1. Thank you for the comment. "Puntos" is the Plain Language term that we have chosen to implement across all translations of documents and content.

	Commenter	Position	Comment	Committee Responses
			2. Item 2, third bullet point – Add "…including preventing you from having guns, ammunition, and magazines", to be consistent with the current law.	2. The definition of ammunition includes magazines as well as other types of ammunition. To be consistent with the language in the other domestic violence forms, the committee proposes to keep the language as proposed.
			3. Item 2, third bullet we recommend making the following a stand-alone sentence. "If you have a child with the person in 1, the court could make orders that limit your time with your child."	3. The committee does not agree with suggestion but has reorganized this page so that the information regarding the consequences of failing to appear for a case is more visible.
			4. We suggest a thorough review of the Spanish translation and a separate Spanish version of this form.	4. The summons is a fully bilingual form and therefore a separate Spanish version will not be needed.
			5. Form DV-200-INFO Title: What is "Proof of Personal Service?" – Change to What is "Proof of Service?" Then Detail the different types of service that may be used to effectuate service in priority order. For example, (1) Personal Service, (2) Substitute Service, etc.	5. The committee would like public comment on this and will consider changing the title of the form in a future forms cycle.
			6. Section Title: "What if the other person is avoiding service? (Page 11) – Add "What if the other person is avoiding (evading) service?	6. The committee has added "(evading)" to the heading of the section.

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
			7. Add clarification about what constitutes "many times."	7. The committee notes that the court's self-help website describes diligent efforts as "usually 3 or more" attempts and have included this same language on the form to describe "many times."
			Request for Specific Comments 8. Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the purpose.	8. Thank you for submitting comments to this proposal. No responses are required for the remaining comments.
			9. Are the forms easy for users, especially self-represented litigants, to understand? Yes, the forms are easy to understand.	
			10. Do you have any suggestions for improving their usability or readability? Yes, please see proposed modifications above.	
			11. Should other information be included on the new forms (DV-205-INFO and DV-210)? Yes, please see proposed modifications above.	
			The advisory committee seeks comments from courts on the following cost and implementation matters: 12. Would the proposal provide cost savings? If so please quantify. Cost savings are not likely. There are now more forms to reproduce and more fee waivers to review if the applicant is requesting publication/posting.	

	Commenter	Position	Comment	Committee Responses
			13. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements would include training of staff from the Court, and Self-Help Centers; estimated time for training is two to three hours. For the Case Management System, it would require the addition of a new document code for form FL-210. 14. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient. 15. How well would this proposal work in courts of different sizes? Courts would be impacted similarly.	
7.	Superior Court of California, County of Orange By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court 657-622-6128 cbeltran@occourts.org	NI	**What is "Proof of Personal Service"? (DV-200-INFO)** 1. On page 1, in the *What is "personal service"?* section, clarify that personal service is when someone, who is 18 years of age or older and not a party to the case, delivers your court papers to the other party.	1. The committee does not agree with the suggested addition because the same information is under the next section entitled "Who can serve?"

	Commenter	Position	Comment	Committee Responses
			Summons (Domestic Violence Restraining Order) (DV-210) 2. On page 1, section 2, update the fourth bullet to say, "… go to the courthouse <u>listed above</u> and ask to see your case file." This would be helpful for counties where domestic violence cases are filed at multiple locations. **What if the Person I want Protection from is Avoiding (Evading) Service? (DV-205-INFO)** 3. On page 1, update the chart to clarify that someone 18 years of age or older and not a party to the case must serve the restraining person. 4. On page 3, in the *Post in courthouse* section, update the sentence that reads, "If the judge allows you to serve the restrained person this way, you must find a server to post form DV-210 for you in the location approved by the judge" to allow for other options. In Orange County, the court will post the DV-210 on behalf of the party and provide proof of service.	2. The committee has made added this reference. 3. The committee has reorganized the information on the form. The chart is now a step-by-step guide on page one and the language suggested by commenter is under Step 1, with some modifications. 4. The committee has added the following language, "In some courts, the court clerk will post form DV-210 for you."
8.	Superior Court of California, County of San Bernardino By Court Executive Office 247 W. Third Street 11th Floor San Bernardino, California 92415	A	1. Does the proposal appropriately address the stated purpose? Yes 2. Are the forms easy for users, especially self-represented litigants, to understand? Yes	Thank you for your comments. No responses are required for the comments submitted.

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
			3. Do you have any suggestions for improving their usability or readability? None 4. Would the proposal provide cost savings? Possibly will prevent additional hearing dates if it is known from the onset that the proposed restrained party is evading service and an alternative method of service can be accomplished 5. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? There will be training on the process, updating procedures and creating codes for the case management system but overall it would not be too impactful. 6. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes 7. How well would this proposal work in courts of different sizes? I think it would be relatively the same no matter the size of the courthouse.	

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

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
9.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Are the forms easy for users, especially self-represented litigants, to understand? Yes. Q: Do you have any suggestions for improving their usability or readability? No. Q: Should other information be included on the new forms (DV-205-INFO and DV-210)? No. Q: Would the proposal provide cost savings? If so, please quantify. None. 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?	1. Thank you for your comments. No responses are required.

	Commenter	Position	Comment	Committee Responses
			Notifying staff, updating internal procedures, and adding new filings to case management system. Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of all sizes. **GENERAL COMMENTS**: **DV-205-INFO, page 1**: The form states that if the litigant is eligible for alternative service, they can complete the DV-115 form to make the request; however, proposed DV-115 does not include the ability to make this request.	
10.	Superior Court of California, County of Ventura By Julie Camacho, Court Manager		Agree with proposed revisions with the following modifications/clarification: 1. Recommend that the new DV-210 be modified to fit both the English and Spanish information on one page, much like the current Family Law Summons FL-110. The number of postings in the court has increased over the years and due to the limited space that the court has on the	1. The committee understands the challenges of posting. The committee has reorganized the form so that the most important information is on the first page in both English and Spanish.

	Commenter	Position	Comment	Committee Responses
			public bulletin board in the court to post these filings, it would be helpful to reduce the summons to one page to alleviate the need for the court to purchase additional bulletin boards. 2. Is it the intent that the DV-210 will only be issued when the court grants a request for service of the TRO by posting and not every time a Request for Domestic Violence Restraining Order is filed? We recommend that the DV-210 be issued when the court orders service by posting. 3. When the court orders an alternative method of service by posting, how long must the court post the DV-210? Is it 28 days, or 28 days plus an additional 5 days for service requirement under Family Code 243? The code is silent on this issue and it would be beneficial not only to court staff, but to the public, if the number of days to post was set forth in Family Code 243. The same is needed when substitute service or service by publication is granted. 4. Because there are no filing fees required in Domestic Violence cases, the court has already been questioned on why a Request to Waive Court Fees is required when a party is asking the court to order service of the TRO by posting. It would be helpful if this requirement was clearly stated in the appropriate code section.	2. Yes, form DV-210 would only be needed when a method of alternative service requires service of a summons under the Code of Civil Procedure. 3. The timeframe for service is addressed by statute. The question is outside the scope of this proposal. 4. While filing fees are not required in domestic violence restraining order cases under Fam. Code section 6222, the committee notes that the council has previously adopted Rule 5.72 which requires a determination of financial eligibility for service by posting. The suggested revision to applicable statutes is outside the scope of this proposal.

	Commenter	Position	Comment	Committee Responses
			5. Form DV-205-INFO, last paragraph on Page 1, "How do I make a request for alternative service?" tells filers you can complete form DV-115 to make this request but this is the form to request a continuance of the hearing and does not have a place for the party to make a request for an alternative form of service. There are local and Judicial Council forms to request service by publication and posting that can be referenced. 6. Form DV-205-INFO, Page 3, paragraph one "Post in courthouse" can be confusing to filers as worded because it instructs the filer to find a server to post form DV-210 for you in the location approved by the judge. In many courts there is a designated location for posting and the court staff are the only persons who can post the documents and complete the proof of service. Perhaps this section can be revised to instruct the filer to contact the court to determine the requirements for posting. 7. Form DV-205-INFO – eliminate the paragraph titled "May I serve by e-mail or electronically" - it is highly unlikely that a restrained party will provide the necessary consent and file the appropriate Judicial Council consent form to agree to electronic service, so this writer feels this is information that may cause unnecessary confusion to filers.	5. The committee has removed references to form DV-115 and instead refers people to complete other judicial council forms for publication and posting and to check with their local self-help center on how to make a request for other means of alternative service. 6. The committee has added "or ask the court clerk to post" under this section. 7. The committee did not accept this suggestion. The committee believes that whether service by email or other electronic means would be sufficient service will be a common question that litigants will have given that many people use email as a primary means of communication. The committee agrees that electronic service is unlikely to be permitted as the method for alternative

SPR19-39
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases
(Adopt forms DV-117 and DV-210; approve form DV-205-INFO and revise forms DV-200-INFO and DV-250)

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

	Commenter	Position	Comment	Committee Responses
				service but believes that some courts may require electronic service in addition to another of method of service.
11.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	The JRS notes that the inability to personally serve a person to be restrained is a common problem. The proposed rule change addresses its stated purpose of increasing the likelihood that a person to be restrained under a domestic violence restraining order will receive notice. The rule proposal should be implemented because it is an important alternative means to provide notice to persons to be restrained by court order.	Thank you for the comment.
12.	University of California, Irvine By Jane K. Stoever Clinical Professor of Law Director, UCI Initiative to End Family Violence Director, Domestic Violence Clinic University of California, Irvine School of Law jstoever@law.uci.edu 949-824-3418	NI	Thank you for the invitation to comment on judicial council forms regarding continuances and alternative service in domestic violence cases. I have taught domestic violence clinics for over 15 years, having taught at the law schools at Georgetown, American University, and Seattle University prior to being hired in 2013 to direct the Domestic Violence Clinic at the University of California, Irvine (UCI) School of Law, where I also teach Family Law, Domestic Violence Law, and Legal Ethics. The UCI Law Domestic Violence Clinic testified in favor of Assembly Bill 2694 (Stats. 2018, ch. 219) on behalf of multiple clients who were unable to receive legal protection when they could not achieve personal service in domestic violence restraining order cases. The recommendations in this Comment are based on my experience litigating cases in jurisdictions that have long permitted alternative service in domestic violence cases; my research, as reflected in my	

	Commenter	Position	Comment	Committee Responses
			recently published article: Access to Safety and Justice: Service of Process in Domestic Violence Cases, 94 WASH. L. REV. 333 (2019); my clients' insights about service over many years; and my clinic interns' recommendations about the proposed forms. The form proposals in SPR19-39 and SPR19-37 implement the alternative service options that now appear in Family Code Section 6340(a)(2), increasing survivors' and their children's access to safety and justice. My Domestic Violence Clinic reviewed the proposed forms, being particularly mindful of the high percentage of pro per litigants in domestic violence cases in California. We have several recommendations to increase the understanding of legal options, all of which apply to the SPR19-37 packet. 1. Our first recommendation aims to increase knowledge of the new provisions in Family Code Section 6340(a)(2). We suggest that the DV-115, in the Instructions section or under 4(a), include the following language or similar language: "Read DV-205-INFO, What if the Person I Want Protection From Is Avoiding (Evading) Service if, after diligent effort, you have been unable to accomplish personal service." Cross-referencing the DV-205-INFO will increase knowledge of legal options and increase efficiency for courts and litigants, as petitioners may otherwise return to court numerous times without being aware	1. The DV-115 is a form that can be used by either party to request a continuance. Because the new alternative service laws only apply to petitioners the committee did not include reference to form DV-205-INFO. If in the future the committee proposes a request for alternative service form, form DV-205-INFO can be referenced on that form.

	Commenter	Position	Comment	Committee Responses
			that they can request alternative methods of service. 2. Our second set of recommendations seeks a streamlined way of requesting alternative service. The DV-205-INFO instructs, "If you believe you are eligible for alternative service, you can complete form DV-115, Request to Continue Hearing, to make this request." The proposed DV-115, however, does not include a question prompt for doing so. Based on page 5 of the SPR19-37, we understand that the Family and Juvenile Law Advisory Committee considered including an item in the DV-115 regarding alternative means of service, but determined that petitioners could instead use form FL-980 to request publication or posting. This determination is inconsistent with the instructions in DV-205-INFO to use the DV-115 to request alternative service; furthermore, the DV-115 does not guide litigants to the FL-980, and the FL-980 does not provide options for substituted service and other means beyond publication or posting. We recommend that the DV-115, at item 4, include the following option: "After diligent effort, I have been unable to accomplish personal service, and there is reason to believe that the restrained party is evading service. Explain:" An additional prompt should ask litigants to identify which of the following methods of service would be	2. Thank you for your comment. The committee has revised form DV-205-INFO to remove any references to form DV-115. Based on the comments submitted, the committee will consider whether to propose a new request for alternative service form in the future. The committee does not believe that form DV-115 should be revised to include the specific questions posed by commenter as the revisions to form DV-115 would be substantial and including the information may confuse petitioners that are not seeking alternative service which represent the majority of cases.

	Commenter	Position	Comment	Committee Responses
			designed to "give reasonable notice of the action to the respondent: substituted service (mailing service and delivery to a person at the respondent's home, mailing address, or workplace), publication, posting, or other." These questions provide a clear way to request alternative service and prompt litigants to provide information the judicial officer needs, increasing judicial efficiency as the judge enters orders in the DV-116.	
			3. Finally, the DV-116, at item 6(e), could provide a brief explanation of what "substituted service" is, namely that it means leaving a copy and mailing a copy of papers to be served to the restrained person's home or mailing address or workplace. We recommend that 6(e) state as follows, with our addition underlined here: "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):_____, by leaving a copy with a person over age 18 and mailing a copy to the restrained party's ☐ home ☐ mailing address ☐ workplace." The proposed DV-	3. The committee has included this information, with minor edits, on form DV-117, *Order Granting Alternative Service*. Form DV-117 would be an attachment to form DV-116. A separate attachment was created in response to a suggestion by a commenter.[1]

[1] Judge Amy K. Guerra from the Superior Court of Fresno submitted a comment on another proposal which includes form DV-116. In her comment she suggests creating a separate form for alternative service because, in the vast majority of cases, alternative service will not apply.

	Commenter	Position	Comment	Committee Responses
			116 helpfully directs the protected party to the DV-205-INFO in the next sentence. We posit that briefly identifying the meaning of "substituted service" within the DV-116 will help protected parties understand and follow the court order. This Comment seeks to further the legislative purpose of domestic violence restraining orders by increasing the accessibility of this vitally important legal remedy for abuse survivors who are unable to accomplish personal service. Thank you for your consideration of these recommendations. I encourage you to contact me with any questions.	

Item number: 40

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 08/21/19

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 Techology Advisory Committee

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Rules and Forms: Electronic Filing and Service

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257

Recommended by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 14, 2019

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend several rules of court relating to electronic filing and service that implement legislation that requires parties and other persons provide express consent to electronic service. In particular, the amendments (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 consent to the courts. In addition, the committee recommends amendments to the rule governing signatures on electronically filed documents. The amendments will reduce the reliance on paper for signatures and include other persons in addition to the parties within the scope of the rule.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend the California Rules of Court as follows:

1. Amend rule 2.251 to specify how notice of consent to electronic service is to be given, and add an advisory committee comment on example language for consent;

2. Amend rule 2.255 to require electronic filing service providers and electronic filing managers to transmit a the consent to the court; and

3. Amend rule 2.257 to include requirements for electronic signatures on documents signed under penalty of perjury when the declarant and filer are not the same person, allow electronic signatures of opposing parties, include other persons in addition to the parties within the scope of the rule, and add an advisory committee comment about electronic signatures.

The text of the amended rules is attached at pages 8–11.

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976 (Stats. 2017, ch. 319), which amended provisions of Code of Civil Procedure section 1010.6 (section 1010.6) to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court[1] on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision requiring that starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service. Effective January 1, 2019, the Judicial Council amended rules 2.251 and 2.257 to account for these new requirements in section 1010.6.

Analysis/Rationale

Rules 2.251 and 2.255

In 2017, the Legislature amended section 1010.6 to require all persons to provide express consent to electronic service. Rule 2.251(b) had previously allowed the act of electronic filing alone to be 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." (Section 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 by allowing a party to file a form or to consent through an electronic filing service provider (EFSP). One of the objectives of the EFSP option was to replicate the prior process of consenting by the

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

act of electronic filing while also ensuring, consistent with legislative direction, that parties and other persons have 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. The Information Technology Advisory Committee sought specific comments on these issues when the prior proposal to amend rule 2.251(b) circulated for comment in 2018. One superior court suggested the rules should be amended to create standard language for consent to service and include a provision requiring that if a person consents, that person is required to serve notice on all other parties. The committee found the court's suggestions helpful and added amending the rules to its annual agenda for 2019. 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 electronic filing managers (EFMs) to promptly transmit to the court a party's or other person's acceptance of consent to receive electronic service.

Rule 2.257

Effective January 1, 2019, consistent with the statutory requirement, the Judicial Council adopted an amendment to rule 2.257(b) to create a procedure for electronic signatures on electronically filed documents signed under penalty of perjury. Under that procedure, the declarant 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. (Rule 2.257(b)(1).)

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 and not necessarily unique on their face, there is more of a concern about their validity 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 is invalidated. 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 is altered after being electronically signed. The requirements in the proposed rule are similar to those 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 requirements in the proposed rule are the largely the same as for a digital signature, but 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. (See Gov. Code, § 16.5(a)(5); Cal. Code Regs., tit. 2, §§ 22000–22005.)

Even with the change to rule 2.257(b) to account for signatures under penalty of perjury, when an opposing party signature is needed, rule 2.257(d) still requires the use and retention of a

printed document with ink signatures. According to the California Department of Child Support Services (DCSS), which suggested the committee address this issue, the requirement for the continued retention of paper is a challenge for local child support agencies and DCSS as more courts require 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 suggested that the rule be amended because 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. For example, DCSS could send an email a link to an electronic signature application that would allow a party to view and sign documents electronically.

The proposed amendments strike the subdivision (d) heading that reads "Documents requiring signatures of opposing parties" and instead incorporate its requirements under (c), which governs documents not signed under penalty of perjury. Subdivision (d) would no longer be necessary for signatures of opposing parties under penalty of perjury as those requirements would be captured in subdivision (b). 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 is invalidated. 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" has been added to rule 2.257 where appropriate.

Policy implications

The proposal advances the judicial branch goal of promoting rule changes that facilitate the use of technology.(*Strategic Plan for Technology 2019–2022*, pp. 14–15.) In particular, it advances an objective of ensuring "current rules and legislation do not inhibit the use of technology solutions." (*Id.* at p. 14.)

Comments

The proposal circulated for public comment from April 11 through June 10, 2019, as part of the regular spring comment cycle. The following six commenters responded to the invitation to comment:

1. Superior Court of San Diego County, which agreed with the proposal;
2. Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position on the proposal;
3. JRS, which disagreed with the proposal;
4. Orange County Bar Association, which agreed with the proposal;
5. DCSS, which agreed with the proposal; and

6. Executive Committee of the Family Law Section of the California Lawyers Association, which agreed with the proposed amendments to rule 2.257, but took no position on the proposed amendments to rules 2.251 and 2.255.

JRS raised the most significant issues in detailed comments. The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee raised several issues. With respect to the proposed amendments to rules 2.251 and 2.255, JRS raised concerns about the courts' ability to maintain records of parties' consent to electronic service transmitted through EFSPs. The committee considered these concerns, but determined that they relate more to issues with the requirements of section 1010.6 that went into effect on January 1, 2019, than with the proposed rule amendments, which are limited. Effectively, all that the proposed amendments do is ensure that parties, other persons, and the court receive notice that someone has, as stated in section 1010.6, "manifested consent [to electronic service] through electronic means with the court or the court's electronic filing service provider." The issues JRS raised with respect to rules 2.251 and 2.255 would amendments to section 1010.6's requirements for express consent to electronic service.

JRS also raised concerns about the amendments for electronic signatures of nonfilers under rule 2.257. JRS was concerned that courts would be expected to verify or technically validate electronic signatures on electronically filed documents that they accept for filing. This could present significant challenges for courts. The committee considered these concerns. The proposal was not intended to require the courts to validate or otherwise verify electronic signatures when they are filed. Rather, it was intended to ensure that the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people.

The confusion may be with the proposed language as circulated for comment. That proposal provided that an electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *may be declared invalid by the court*." The proposed language in italics injects a possible court decision about the signature, which JRS may be reading as necessitating court involvement in validating the electronic signature.

In developing the proposal, the committee had originally considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *is invalidated*." In the invitation to comment, the committee sought specific comments on the language "the electronic signature *may be declared invalid by the court*" versus "the electronic signature *is invalidated*." After discussing JRS's comments and the options to address the concerns, the committee decided to return to the language "the electronic signature is invalidated."

The benefit of the "is invalidated" language is that it is consistent with the attributes of digital signatures, codified in the Government Code and the California Code of Regulations. All digital signatures must be "linked to data in such a manner that if the data are changed, the digital

signature is invalidated." (Gov. Code, § 16.5(a)(4).) The only difference between a digital signature under the Government Code and an electronic signature under the proposed rule, is that the rule would not require an electronic signature to adhere to the Secretary of State's digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000–22005.)

The technical attributes and technology underpinning a compliant electronic signature should not impair the court's authority to resolve disputes about an electronic signature. The committee determined that this is best addressed in a clarifying advisory committee comment stating, "The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature."

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 determined 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 and sought specific comments on two options that are discussed in detail in the "Comments" section, above.

Fiscal and Operational Impacts

JRS commented that the proposal may have significant fiscal impact, impact existing automated systems, increase court staff workload, and impact on local or statewide justice partners. In particular, JRS noted that it would take significant resources to enable some courts' systems to accept information transmitted from an EFSP to the court about a person's consent to electronic service through the EFSP. As discussed in the "Comments" section, above, some of the issues raised pertain more to requirements in the Code of Civil Procedure than the rules. As also discussed, to address issue JRS raised about staff and technical challenges related to validation of signatures, the committee revised the language in the rule amendment and added an advisory committee comment.

The Superior Court of San Diego County commented that implementation would include notifying and training staff and updating internal procedures.

DCSS commented that it is working on establishing statewide processes for electronic service for local child support agencies and that the amendments will improve the way it and local child support agencies do business with case participants and the courts.

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.255, and 2.257, at pages 8–11
2. Chart of comments, at pages 12–20.
3. Link A: Code of Civil Procedure section 1010.6, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6*.

4. Link B: Government Code section 16.5, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=16.5*.
5. Link C: California Code of Regulations, title 2, sections 22000–22005, *https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)*

Rules 2.251, 2.255, and 2.257 of the California Rules of Court are 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

Subdivision (b)(1)(B). The rule does not prescribe specific language for a provision of a term of service when 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 is invalidated; 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 it 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 persons other than the filer 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)~~(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 is invalidated.

~~(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.

Advisory Committee Comment

The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.

SPR19-40
Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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

	Commenter	Position	Comment	Committee Responses
1.	California Department of Child Support Services By Lara Chandler Racine Attorney III	A	The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation. Rule 2.251 This rule requires the manifestation of affirmative consent to accept electronic service and specifies how notice of consent to electronic service is to be given as well as provides examples via the EFSP and EFM of language for consent. The proposal addresses the stated purpose and provides clarity to the affirmative consent process. The proposed changes are supported by the DCSS and our LCSAs. DCSS maintains the e-filing platform by which participating LCSAs e-file their legal documents. The local agency, however, is necessarily the party accepting service. While DCSS has not been advised that e-service is a widespread issue throughout our e-filing counties, it has been reported as problematic for those local agencies that have received some sort of e-service. DCSS has not yet established statewide protocols and electronic addresses for electronic service and so the counties getting e-served are receiving those documents inconsistently, i.e. individual staff email accounts, etc. The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent	The committee appreciates the support and comments.

SPR19-40
Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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

	Commenter	Position	Comment	Committee Responses
			and effective approach that protects the due process of all parties involved. Rule 2.257 The Invitation to Comment proposes to amend Rule 2.257, to allow electronic signatures on e-filed documents containing signatures of opposing parties not under penalty of perjury. As this change was at the request of DCSS, and the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments. The proposal addresses the stated purpose and provides language that will enhance the way DCSS does business with our case participants and the court.	
2.	California Lawyers Association Executive Committee of the Family Law Section By Saul Bercovitch Director of Governmental Affairs	A	FLEXCOM agrees with the proposed amendments to Rule of Court 2.257. FLEXCOM has no comment on the proposed amendments to Rules of Court 2.254 and 2.255.	The committee appreciates the support.
3.	Orange County Bar Association By Deirdre Kelly President	A	The OCBA believes the proposal addresses the stated purpose.	The committee appreciates the support.
4.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court	NI	□ Rule 2.251 Electronic Service □ Clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to "affirmative consent" for all documents.	The committee appreciates the comments. Regarding the comment on rule 2.251, the comment is outside the scope of the proposed amendments, but raises an important issue for the committee's consideration, which the committee may consider in a future rule proposal.

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

SPR19-40
Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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

	Commenter	Position	Comment	Committee Responses
			□ Rule 2.257 Requirement for signatures on documents □ If the electronic signature is declared invalid, will the court be expected to set a hearing on their own motion for the parties to appear or proceed in another manner? **Request for Specific Comments**. ▪ *What would the implementation requirements be for courts?* Judges and staff would be informed of the changes. Updates to procedures and the case management system may be needed. Discussions will be needed with the case management system vendor, Tyler, to identify system and process changes needed for compliance.	Regarding the comment on rule 2.257, how to proceed would be up to the court.
5.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: 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	The committee appreciates the support and the comments.

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

	Commenter	Position	Comment	Committee Responses
			proposed language preferable? Is the particular requirement necessary? The proposed language is preferable, as it leaves authority with the judicial officer. 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. Notifying/training staff and updating internal procedures.	
6.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	N	Do not agree with proposed changes. The JRS notes the following impact to court operations: • Significant fiscal impact • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.) • Increases court staff workload • Impact on local or statewide justice partners. Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes. Systems would need to be re-designed to support this process and allow court staff to easily identify who consented. This will	The committee appreciates the comments and concerns raised. The input about impacts, which will be reflected in the report to the Judicial Council.

	Commenter	Position	Comment	Committee Responses
			likely be a complicated change that involves the EFSP systems as well as the core CMS and will be a cost impact to the court. On the signature side of the proposal, if the court is required to validate signatures, besides the cost and challenges of implementing a technical solution to validate signature authentication and data integrity, we have concerns about the public understanding how to implement the digital protections that ensures no data is changed. Just doing research on the issue, we had to have an expert in the field of digital discovery explain to us step by step how this process would work. This rule change adds technical validation requirements for compliance that courts are not prepared to handle and puts courts in the position of rejecting documents for non-compliance for an issue that has other avenues of resolution. If a document's signature authenticity is challenged, the parties should be required to address these challenges through a motion process. Furthermore, the JRS believes that courts should not serve as the custodian of eService consent. If there is a dispute between the parties as to the consent to eservice between them, they can bring that dispute before the courts and submit their evidence of notice at that time without having the courts go through an onerous administrative process of receiving, storing and tracking electronic service consents between the parties that is rarely challenged.	As long as there has been electronic service, consent has been required. By statute, where electronic service is permitted, but not required, the court can only electronically serve documents issued by the court if the person being served has consented. (Code Civ. Proc, § 1010.6(a)(2)(A)(ii), (a)(3).) Unless electronic service is mandatory, the clerk should only be electronically serving parties and other persons that have consented to it. The proposed rule amendments do not change this process.

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

	Commenter	Position	Comment	Committee Responses
			For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService. Suggested modifications: It is important to note, that there is an option in the code, CCP 1010.6(d), to allow courts the option of implementing mandatory eService via local rule for Civil. As eService is critical for our day to day operations to serve court orders, our court has already received approval to implement such a local rule for Civil. The ability to have mandatory eService by local rule is NOT being impacted by this proposal. However, because the local rule option is not applicable to other case types such as Probate, the comments below are submitted for consideration, as the proposed process will impact staff workload. REQUESTED CLARIFICATION: 1) For Rule 2.251 §(b)(1)(B)—verbiage was added "a party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:…" Clarification is requested as to whether the EFSP, EFM, individual parties or their attorney(s) are required to provide electronic service.	Rule 2.251(b) concerns permissive electronic service, not mandatory electronic service. In that context, no one is required to use electronic service.

	Commenter	Position	Comment	Committee Responses
			2) For Rule 2.255 § (a)(c)(2)—clarification is requested. Is the intent of the transmittal to be a filed judicial council form document filed into each individual case or data transmitted back to the case management system for each individual case? Additionally, would attorneys be able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis?	Consent would be applicable to each individual case. It could be recorded on a Judicial Council form or in data transmitted from the EFSP. Attorneys cannot file consent at the attorney level or party level. Code of Civil Procedure section 1010.6 requires consent to be in the "specific action." (Code Civ. Proc., § 1010.6(a)(2)(A)(2).)
			3) For rule 2.251, clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to "affirmative consent" for all documents.	This is outside the scope of the proposed amendment, but an important consideration to rule 2.251 in general. The proposal does not address this issue, but the committee will consider it for a future rule amendment.
			4) For rule 2.257(b)(1): Will clarification be provided on who will be expected to verify the electronic signature, if needed? The court does not currently verify signatures of documents it has received. Any ambiguity in the rule that could place a burden on the court to verify signatures should be clarified to indicate that it is not the court's responsibility to verify signatures on documents it accepts for filing. Any rule that requires the court to verify signatures will have a tremendous fiscal impact on the court. The rule should be modified to require the parties to maintain the metadata for the electronic signature and the court is not responsible for this process. 5) The requirements for signatures poses significant challenges because our case management system "flattens" documents when they are filed, so if I am correct, the court would likely be unable to	With respect to the electronic signature amendments, the proposal was not intended to require the court to validate or otherwise verify signatures when they are filed. Rather, it was intended to ensure that the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. The committee considered several options, including those suggested by JRS. Ultimately, the committee decided to return to the alternative language that it had considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature is invalidated." The benefit of

	Commenter	Position	Comment	Committee Responses
			determine whether an electronic signature is valid. The proposed amendment to Rule 2.257(b)(1) for documents signed under penalty of perjury reads in part: "If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under 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." A court cannot verify a signature that simply reads "-s- "and the data behind it showing who signed it, when, and where, is not stored by the filing system. Also, if any electronically filed document is unsigned that is required to be signed under penalty of perjury, would the court simply assume that there is a wet-signed copy of the document under Rule 2.257(b)(2)? Please see comments in above-paragraph relating to court's inability to verify signatures. 6) The California's Uniform Electronic Signatures Act contains less stringent requirements for signatures under penalty of perjury than the proposed new rule and should be considered in modifying the signature requirements: Civil Code section 1633.11 subdivision (b) reads: In a transaction, if a law requires that a statement be signed under penalty of perjury, the addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.	this language is that it is identical to an attribute of a digital signature, which is a known standard in California. Digital signatures are codified in the Government Code and the Code of Regulations. All digital signatures must have the attribute of being "linked to data in such a manner that if the data are changed, the digital signature is invalidated." (Gov. Code, § 16.5(a)(4).) The only difference between a digital signature under the Government Code and an electronic signature under the proposed rule would be that the electronic signature would not have to adhere to the Secretary of State's digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)

SPR19-40
Rules and Forms: Electronic Filing and Service
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)

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

	Commenter	Position	Comment	Committee Responses
			Civil Code section 1633.2 subdivision (h) defines an "electronic signature" to mean "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 the electronic record. For purposes of this title, a "digital signature" as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature."	

Item number: 41

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 08/21/19

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 Techology Advisory Committee

Staff contact (name, phone and e-mail): Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Rules and Forms: Remote Access to Electronic Records by Government Entities

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.540

Recommended by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 13, 2019

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends 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 court electronic records, and make a minor amendment to the good cause provision of the rule. These amendments will make the rule more comprehensive and remove a need to make a good cause finding for those entities.

Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend rule 2.540(b)(1) to:

1. Add "county public administrator" to the list of government entities in the rule, and allow remote access to probate electronic records by county public administrators;
2. Add "county public conservator" to the list of government entities in the rule, and allow remote access to criminal, mental health, and probate electronic records by county public conservators; and

3. Change “statutory duties” to “legal duties” in the standard for good cause.

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

Relevant Previous Council Action

Rule 2.540 of the California Rules of Court[1] is one of several new rules addressing remote access to electronic records by government entities that the Judicial Council adopted effective January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. 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.

Analysis/Rationale

During the public comment period in 2018 when rule 2.540 was first proposed, a commenter recommended that it include county public administrators and county public conservators. When drafted, rule 2.540 was intended to include state and local government entities with regular business before the courts. The Information Technology Advisory Committee determined that county public administrators and county public conservators fell within this scope and the rule should be amended to include them. Under the amendments, courts could permit (1) a county public administrator to have remote access to probate electronic records and (2) a county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for a county public administrator is tailored to electronic records relevant to administering decedents’ estates. Remote access for a county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person.

In addition to the listed state and local government entities, rule 2.540 includes a good cause provision under which a court may grant remote access to electronic court records to 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.” (Rule 2.540(b)(1)(O).) The committee received a suggestion to change “statutory duties” to “legal duties” to be more comprehensive, as legal obligations may stem from more than statute.

Policy implications

The proposed amendments are noncontroversial. No commenters raised policy issues with the proposal. The proposed amendments will facilitate remote access for government entities consistent with the intent of the rule.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Four commenters responded to the invitation to comment: the

[1] All further references to “rule” or “rules” are to the California Rules of Court.

Superior Court of San Diego County, the Superior Court of Orange County, the Juvenile Court and Family Law Divisions of the Superior Court of Orange County, and the Orange County Bar Association (OCBA). Three commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court and OCBA both agreed with the proposal. The Orange County court did not take a position, but the court's Juvenile Court and Family Law Divisions commented that they would be in agreement if and when the court is able to offer remote access.

Alternatives considered

The alternative would be to maintain the status quo, but the amendments would be preferable because they would make the rule more comprehensive.

Fiscal and Operational Impacts

Adding county public administrators and county public conservators 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 proposed amendments are not expected to result in any costs.

Attachments and Links

1. Cal. Rules of Court, rule 2.540, at page 4
2. Chart of comments, at page 5

Rule 2.540 of the California Rules of Court is 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) * * *

SPR19-41
Rules and Forms: Remote Access to Electronic Records by Government Entities (Amend Cal. Rules of Court, rule 2.540)

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

	Commenter	Position	Comment	Committee Responses
1.	Orange County Bar Association By Deirdre Kelly President	A	Does the proposal appropriately address the stated purpose? By adding remote electronic access to the public administrator for court probate records and to the public conservator (aka public guardian) for remote access to court probate, criminal, and mental health records, the proposal fulfills its stated purpose.	The committee appreciates the support.
2.	Superior Court of California, County of Orange By Denise Parker Program Coordinator/Specialist IMPACT Team – Criminal/Traffic Operations West Justice Center	NI	Request for Specific Comments: No significant change, adds the two entities listed in the summary to the list of entities that can access court records electronically. The court is still exploring alternatives to comply with the rule of court changes that were effective January 2019 governing access for justice partners. The proposal does appropriately address the stated purpose.	The committee appreciates the comments.
3.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court	A	Currently, Orange County does not offer remote access to electronic records on Family Law or Juvenile case files. However, if/when we do, we would be in agreement with the changes. It would require major enhancements to our case management system.	The committee appreciates the comments.
4.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. No additional comments.	The committee appreciates the support.

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

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children:Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484, 5.485, and 5.486; renumber 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

Committee or other entity submitting the proposal:
Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee

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

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

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484, 5.485, and 5.486; renumber 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

Recommended 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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 15, 2019

Contact
Ann Gilmour, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend adopting a new rule of court, amending 16 other rules, creating 3 new forms for Indian Child Welfare Act (ICWA) proceedings, and revising 27 forms for 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.

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2020:

1. Adopt rule 5.484 to create a rule related specifically to emergency proceedings in ICWA cases consistent with federal regulations and revised state law;

2. Amend rule 5.480 to reflect the four distinct proceedings set out in the federal regulations and AB 3176;

3. Amend rule 5.481 to implement changed inquiry and notice requirements;

4. Amend rule 5.482 to reflect the changes in ICWA noticing requirements;

5. Amend rule 5.483 to conform the jurisdictional and transfer provisions to the new language of Welfare and Institutions Code section 305.5;

6. Amend rules 5.484 and 5.485 to revise the analysis of placement preferences and active efforts to reflect the language of the new federal regulations and renumber as rules 5.485 and 5.486, respectively;

7. Amend rules 5.485 and 5.486 to reflect requirements regarding active efforts and compelling reasons not to terminate parental rights and renumber as rules 5.486 and 5.487, respectively;

8. Amend rule 5.550 to reflect the limitations on continuances and time requirements found in AB 3176;

9. Amend rule 5.570 to reflect the distinction between reasonable and active efforts;

10. Amend rule 5.668 to reflect the initial ICWA inquiry that must be made by the court;

11. Amend rule 5.674 to include the findings that revised Welfare and Institutions Code section 309(a)(3) requires the court make on the record at a detention hearing;

12. Amend rule 5.676 to reflect the detention requirements for an Indian child;

13. Amend rule 5.678 to reflect the specific requirements when the court knows or has reason to know the child is an Indian child, consistent with the requirements of AB 3176;

14. Amend rule 5.690 to reference the placement preference requirements and time requirements to get to disposition when the child is an Indian child;

15. Amend rule 5.725 to conform to the Court of Appeal decision in *In re J.Y.* (2018) 30 Cal.App.5th 712;

16. Renumber rule 5.487 as rule 5.488;

17. Revise form ICWA-005-INFO to reflect the revised requirements of AB 3176;

18. Revise form ICWA-020 to have the questions asked of parents more closely follow the inquiry required in the federal regulations and AB 3176;

19. Revise form ICWA-030 to add a section for information on direct lineal ancestors in response to the Court of Appeal decision in *In re E.H.* (2018) 26 Cal.App.5th 1058;

20. Revise form ICWA-040 to simplify the purpose of the form to designate a tribal representative;

21. Revise form ICWA-060 to conform the language to the requirements of AB 3176 concerning what is good cause not to transfer a case to tribal court;

22. Adopt forms ICWA-070, ICWA-080, and ICWA-090 to create a process to seek return of an Indian child removed on an emergency basis as mandated by AB 3176;

23. Revise forms JV-100, JV-110, and JV-600 to clarify the way ICWA inquiry is made and attested to;

24. Revise form JV-320 findings required by AB 3176 when a child is an Indian child;

25. Revise form JV-405 to include required inquiry and findings about Indian status;

26. Revise form JV-410 to include the required ICWA findings regarding inquiry, ICWA status, placement preferences, and active efforts;

27. Revise form JV-412 to reflect ICWA notice requirements;

28. Revise forms JV-415 and JV-418 to add findings related to active efforts;

29. Revise form JV-421 to reflect ICWA evidentiary requirements;

30. Revise forms JV-430 and JV-432 to add findings regarding active efforts;

31. Revise forms JV-433, JV-435, JV-437, JV-438, JV-440, JV-442, JV-443, JV-455, and JV-457 to add required ICWA findings and orders.

The text of the rules is attached at pages 10–36; the proposed forms are attached at pages 37–140.

Relevant Previous Council Action

The federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA) 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. The Judicial Council has acted numerous times to implement and improve compliance with the Indian Child Welfare Act, including:

- 1995 amendments to former rules 1431, 1432, and 1463 to assure proper notice consistent with ICWA and adopted former rule 1439;
- 1998 amendments to former rule 1439 and forms JV-100 and JV-110 to better identify Indian children and comply with ICWA; and
- 2000 and 2005 amendments to former rule 1439 and revisions to various juvenile and family law forms to clarify when and how notice should be given under ICWA.

In 2006, California enacted SB 678 to substantially incorporate provisions of ICWA into the Family Code, Probate Code, and Welfare and Institutions Code. Following enactment of SB 678, the Judicial Council adopted implementing rules of court and forms.[1]

The 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 for other reasons.

Analysis/Rationale

In 2016, the federal government for the first time since 1979 finalized comprehensive regulations and issued updated guidelines implementing ICWA.[2] In some areas, the regulations and guidelines were inconsistent with existing California law and practice. In addition, in 2017, the

[1] That rules and forms proposal was adopted by the Judicial Council at a meeting on October 26, 2007 (agenda item A27) and is available at www.courts.ca.gov/documents/102607ItemA27.pdf.

[2] See 25 C.F.R. § 23, www.ecfr.gov/cgi-bin/retrieveECFR?gp=&r=PART&n=25y1.0.1.4.13; *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

California ICWA Compliance Task Force presented its report to Attorney General Xavier Becerra.[3] The task force 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 to (1) address issues identified in the 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."[4] 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 Family Code and Probate Code, AB 3176 only amends the Welfare and Institutions Code. In some instances, those provisions of the Welfare and Institutions Code are incorporated by reference in the Family Code and Probate Code. 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[5] and suggested by commenters 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 (Sen. Bill 179; Atkins, Stats. 2017, ch. 853). The questions about a child's sex found at item 1e of *Juvenile Dependency Petition (Version One)* (form JV-100), item 1b of *Juvenile Dependency Petition (Version Two)* (form JV-110), and *Juvenile Wardship Petition* (form JV-600) were identified as being high priority to assess whether it would be possible to change the term to "gender." The forum and committee concluded that these should be changed from sex to gender.

Policy implications

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.

---

[3] See *www.caltribalfamilies.org/wp-content/uploads/2019/06/ICWAComplianceTaskForceFinalReport2017-1.pdf*.

[4] Assem. Bill 3176 (Waldron); Stats. 2018, ch. 833.

[5] *In re E.H.* (2018) 26 Cal.App.5th 1058; *In re J.Y.* (2018) 30 Cal.App.5th 712.

Comments

The proposal circulated for public comment from April 11 through June 10, 2019, as part of the spring 2019 invitation-to-comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys and distributed through the California Department of Social Services Office of Tribal Affairs listserve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

Seventeen comments were received. None of the comments opposed the proposal. Six did not indicate whether they approved, four approved if amended, and seven approved of the proposal.

Among the commenters that approved the proposal without modification were the California Lawyers Association Executive Committee of the Family Law Section, the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the Marin County Counsel's Office, and the Superior Court of San Bernardino County.

The invitation to comment sought specific input on several issues and revised the proposal based on comments in six broad categories:

- Inquiry and notice
- Proceedings after notice
- Jurisdiction and transfer
- Emergency removal and detention
- Active efforts
- Placement preferences

Many of the comments were technical corrections and grammatical suggestions. Many, but not all, were accepted. Many other suggestions that were not controversial and strengthened and clarified the proposal by better conforming it to the statutes were also accepted and incorporated into the proposal. The revisions made in response to the comments are consistent with rule 10.22(d)(2). Several of the comments were provided in red-line tracked changes to the original proposal and in other formats not easily copied verbatim into the comment chart. The full text of those comments is attached as Appendix A. The length of the comment chart makes it difficult to follow, so a summary of revisions in response to the comments, and the comments that were not followed, are arranged by topic and attached as Appendix B.

Inquiry and notice

The proposal was revised to clarify in rules 5.481 and 5.668 at which hearings, of whom, and what specific questions need to be asked as part of ICWA inquiry; when and how information on

a child's status would be shared with tribes outside of formal notice; language regarding tribal determinations of membership issues; exemptions to notice timing that had inadvertently been removed from the rules were reinstated; and the findings options related to Indian status.

An Advisory Committee comment was added to rule 5.481 to reference the provisions in the federal regulations and the Welfare and Institutions Code that provide detailed recommendations for contacting tribes and fulfilling the obligations of inquiry, due diligence, information sharing, and notice to tribes.

Consideration was given to a comment about whether notices for continued hearings needed to be sent by registered mail, return receipt requested, and the forum and committee concluded that consistent with existing case law, notice by registered mail, return receipt requested, was only required for an initial hearing date.

The forum and committee considered the suggestion of one commenter that all relatives present in court should be ordered by the court to complete form ICWA-020 as part of the court's ICWA inquiry, but it was ultimately concluded that this was inconsistent with the statutory inquiry scheme and impractical. Similarly, another commenter suggested that the rules should require that tribes be re-noticed using form ICWA-030 whenever new information relevant to a child's Indian ancestry was received. The forum and committee concluded that this was inconsistent with the statutory changes that limited when formal ICWA notice using form ICWA-030 was required.

Forms JV-405 (item 12) and JV-410 (item 10) were revised to incorporate the statutorily mandated findings and orders regarding further inquiry and due diligence for ICWA inquiry.

Proceedings after notice

The proposal was revised to add back in to rule 5.482 several exceptions to the general timing requirements that had been removed from the rule. Commenters noted that the exceptions were still relevant notwithstanding the revisions of AB 3176. The proposal was also required to add reference to the statutory requirements for proof of notice and to incorporate the findings and orders on issues of adequacy of inquiry and notice, and the child's Indian status, authorized by the statute.

Jurisdiction and transfer

The proposal was revised by incorporating into rule 5.483 the requirement to notify a tribal court when a transfer petition related to that court is filed and asking the tribal court for a timely response. The proposal also incorporated the statutory language on factors that cannot be considered as good cause not to transfer to tribal court. Rule references in the Advisory Committee comment were updated to reflect the pending rule changes.

Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) was revised to reference the need for an evidentiary hearing on a contested transfer request.

Emergency removal and detention
The proposal was revised by incorporating into rules 5.483 and 5.678 the statutory language regarding findings required to support an emergency removal and detention of an Indian child.

Rule 5.484 was revised to refer to the relevant general civil rules that govern ex parte proceedings and apply in juvenile court to reduce confusion.

Revisions were made to rules 5.550 and 5.678 to incorporate the statutory time frames limiting emergency removals of an Indian child.

Rule 5.676 was revised to incorporate the statutory requirement that the court's findings to support detention of an Indian child must be made on the record.

Form JV-410 (item 15) was revised to incorporate the statutorily mandated court findings to support detention of an Indian child.

Active efforts
Revisions were made to rule 5.570 to incorporate the statutory requirement for active efforts findings instead of reasonable efforts findings to support termination of reunification services when the case involves an Indian child.

Revisions were made to rule 5.678 to reflect the statutory description of active efforts and to provide the court with the alternative to find that active efforts have been successful.

Forms JV-418 (item 3), JV-421 (item 5), JV-430 (item 11), JV-432 (item 7), JV-433 (item 7), JV-435 (item 11), JV-438 (item 3), JV-440 (item 12), JV-442 (item 3), JV-455 (item 12), and JV-457 (item 4) were revised to conform the description of active efforts to the language in the statute and to add an alternative finding that active efforts have been either successful or unsuccessful.

Placement preferences
Rules 5.484 and 5.678 were revised to incorporate statutory language regarding considerations and evidentiary standards governing the placement of an Indian child, and the ongoing nature of the placement preference considerations.

Forms JV-320 (item 17), JV-410 (item 16), JV-421 (item 12), JV-432 (item 5), JV-433 (item 5), JV-437 (item 5), JV-438 (item 8), JV-442 (item 8), JV-443 (item 5), and JV-457 (item 6) were revised to change the language regarding the extent of efforts that must be made to find a placement within the placement preferences for an Indian child from an "exhaustive" to a "diligent" search to conform to the statutory language and to incorporate language regarding the evidentiary standard required to find good cause to depart from the placement preferences.

Alternatives considered

The forum and committee carefully considered whether all of the proposed revisions were necessary and determined that they were important to reducing confusion with respect to ICWA requirements. The forum and committee carefully considered each of the comments received, accepted many of them and determined that the current proposal is appropriate to implement the requirements of AB 3176.

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 changes 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.

Attachments and Links

1. Cal. Rules of Court, rules 5.480–5.488, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725, at pages 10–36
2. Forms ICWA-005-INFO, ICWA-010(A), ICWA-020, ICWA-030, ICWA-040, ICWA-060, ICWA-070, ICWA-080, ICWA-090, 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 37–140
3. Chart of comments, at pages 141–193
4. Appendix A: Full text of comments of Agua Caliente Band of Cahuilla Indians, Children's Law Center of California, and Superior Court of San Diego County, at pages 194–269
5. Appendix B: Summary of comments and responses by topic, pages 270–281
6. Link A: Assembly Bill 3176 (Stats. 2018, ch. 833), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB3176

Rule 5.484 of the California Rules of Court is adopted, rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, and 5.690 are amended, rules 5.484, 5.485, and 5.486 are amended and renumbered, and rule 5.487 is renumbered, effective January 1, 2020, to read:

Rule 5.480. Application

This chapter addressing the Indian Child Welfare Act (25 ~~United States Code section~~ U.S.C. § 1901 et seq.) as codified in various sections of the ~~California~~ Family Code, Probate Code, and Welfare and Institutions Code~~s~~, 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, preadoptive placement, 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, preadoptive placement, 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 in an 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, preadoptive placement, or adoption proceeding; and at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement, as described in Welfare and Institutions Code section 224.1(d)(1), or that may result in an order for guardianship, conservatorship, or custody under Family Code section 3041; the court must:

(A) Ask each participant present whether the participant knows or has reason to know 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) 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 or 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)~~ 224.3(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~~ who reasonably can be expected to have information regarding the child's membership status or eligibility. These contacts must at a minimum include the contacts

and sharing of information listed in Welfare and Institutions Code section 224.2(e)(3).

(5) The petitioner must on an ongoing basis include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child's Indian status, as well as evidence of how and when this information was provided to the relevant tribes. Whenever new information is received, that information must be expeditiously provided to the tribes.

~~(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) There is reason to know a child involved in a proceeding 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 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 possesses 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 there is no reason to know the child is an Indian child and 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; or

(B) Find it is known the child is an Indian child, and that the Indian Child Welfare Act applies, and order compliance with the requirements of the act, including notice in accordance with (c) below; or

(C) Find there is reason to know 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.

(4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, must be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

(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~~ 224.3, Family ~~Law~~ Code section 180, and Probate Code section 1460.2 for all initial hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, or an order of guardianship, conservatorship, or custody under Family Code section 3041. For all other hearings, and for continued hearings, notice must be provided to the child's parents, legal guardian or Indian custodian, and tribe in accordance with Welfare and Institutions Code sections 292, 293, and 295.

(2) * * *

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in ~~(a)(5)~~(b)(1).

(4) * * *

Advisory Committee Comment

Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence, information sharing, and notice under the Indian Child Welfare Act and state law.

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~~ a 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~~ has 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

Proof of notice in accordance with this rule must be filed with the court in advance of the hearing, except for those excluded by (a)(2) and (3), and must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.

(c) ~~When there is no information or response from a tribe~~ Determination of applicability of the Indian Child Welfare Act

(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.~~ If the court finds that proper and adequate inquiry, further inquiry, and due diligence were conducted under Welfare and Institutions Code section 224.2 and, if applicable, notice provided under Welfare and Institutions Code section 224.3, and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the Indian Child Welfare Act does not apply to the proceedings.

(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.~~ The determination of the court that the Indian Child Welfare Act does not apply in (c)(1) is subject to reversal based on sufficiency of the evidence. The court must reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry under Welfare and Institutions Code section 224.3.

~~(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~~ are entitled to 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~~ its intent to intervene.

(e) * * *

(f) Consultation with tribe

Any person or court involved in the placement of an Indian child in a proceeding described by rule 5.480 must use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference specified in rule ~~5.484~~ 5.485.

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 under 25 United States Code section 1919:

(1) ~~The Indian child is a ward of the tribal court;~~ If the court receives information at any stage of the proceeding suggesting that the Indian child is already the ward of the tribal court or ~~The Indian child~~ is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under 25 United States Code 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 must 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 must 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 consistent with 25 United States Code section 1922, 25 Code of Federal Regulations part 23.113, and Welfare and Institutions Code section 319 to protect the child from risk of imminent physical damage or harm and if more time is

needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe.

(b) * * *

(c) Documentation of request to transfer a case to tribal court

(1) * * *

(2) Upon receipt of a transfer petition, the state court must ensure that the tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the tribal court wishes to decline the transfer.

(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) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems;

(B) Whether the child custody 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. It must not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer;

(C) Whether there have been prior proceedings involving the child for which no transfer petition was filed;

(D) Whether transfer could affect the placement of the child; or

(E) Whether the Indian child has cultural connections with the tribe or its reservation.

(3) * * *

~~(c) 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

(1) * * *

(2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated orally on the record or in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

~~(g)~~(f) Order on request to transfer * * *

~~(h)~~(g) Advisement when transfer order granted * * *

~~(i)~~(h) Proceeding after transfer * * *

Advisory Committee Comment

Once a transfer to tribal court is finalized as provided in rule 5.483~~(i)~~(h), the appellate court lacks jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child "pending review on appeal or for any other period or periods that it may deem appropriate" (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See *Nuckolls v. Bank of California, Nat. Assn.* (1936) 7 Cal.2d 574, 577 [61 P.2d 927] ["Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court~~.~~"].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112).

~~Subsection (h)~~ Subdivision (g) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.484. Emergency proceedings involving an Indian child

(a) Standards for removal

Whenever it is known or there is reason to know 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. 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 custodian, if any;

(4) The steps taken to provide notice to the child's parents, Indian custodian, and tribe about the emergency proceeding;

(5) If the child's parents and Indian custodian 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 custodian;

(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

(1) Whenever it is known or there is reason to know 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 on *Request for Ex Parte Hearing to Return Physical Custody of an Indian Child* (form ICWA-070) to determine whether the emergency situation has ended.

(2) If the request provides evidence of new information establishing that the emergency placement is no longer necessary, the court must promptly schedule a hearing. At the hearing the court must 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 must order the child returned to the physical custody of the parents or Indian custodian.

(3) In accordance with rules 3.10 and 3.20, this procedure is governed by the provisions of division 6, chapter 3 and division 11, chapter 4 of title 3 of the California Rules of Court.

(c) Time limitation on emergency proceedings

An emergency removal must 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 5.485.~~5.484~~. Placement of an Indian child

(a) * * *

(b) Standards and preferences in placement of an Indian child

(1) All placements of an Indian child must be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met.

~~(1)~~(2) Unless the court finds by clear and convincing evidence that there is 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)~~(3) 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, mental, 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 a suitable ~~families~~ placement within the placement preferences based on a documented diligent effort to identify ~~families~~ placements meeting the preference criteria. The standard for determining whether a placement is unavailable must 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)~~(4) The placement preferences must be analyzed and considered each time there is a change in the child's placement. A finding that there is good cause to deviate from the placement preferences does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

(5) 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)~~(6) * * *

~~(5)~~(7) * * *

~~(6)~~(8) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in ~~rule 5.481(a)(4)(A)~~ 25 United States Code section 1903(2), and participation in the cultural and ceremonial events of the child's tribe.

(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 Welfare and Institutions Code section 224.1(f).

(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) Active 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 5.486.~~5.485.~~ 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" must include an "extended family member," as defined in the Indian Child Welfare Act (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 tribal customary adoption, guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.487.~~5.486.~~ Petition to invalidate orders

(a) Who may petition

Any Indian child who is the subject of any action for 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, preadoptive placement, adoptive placement, or termination of parental rights; any parent or Indian custodian from whose custody such child was removed; and the Indian child's tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

(b)-(c) * * *

Rule 5.488.~~5.487.~~ Adoption record keeping * * *

Rule 5.550. Continuances

(a)–(b) * * *

(c) Continuances of detention hearings (§§ 319, 322, 635, 636, 638)

(1)–(2) * * *

(3) When the court knows or has reason to know the child is an Indian child, the detention hearing may not be continued beyond 30 days unless the court makes the findings required by section 319(e)(2).

(d) Continuances of a dispositional hearing when the court knows or has reason to know the child is an Indian child (§ 352(b))

(1) When the court knows or has reason to know that the case involves an Indian child, no continuance of a dispositional may be granted that would result in the hearing being held longer than 30 days after the hearing at which the minor was ordered removed or detained unless the court finds that there are exceptional circumstances requiring a continuance.

(2) The absence of an opinion from a qualified expert witness must not, in and of itself, support a finding that exceptional circumstances exist.

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 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 and that these efforts have proved unsuccessful. The court may grant the petition after following the procedures in (f), (g), and (h).

(7) * * *

(f)–(g) * * *

(h) Conduct of hearing (§ 388)

(1) * * *

(A) * * *

(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. 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 and that these efforts have proved unsuccessful.

(C)–(E) * * *

(2) * * *

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) At the first appearance in court of each party, the court must ask each participant present at the hearing whether:

(A) The participant knows or has reason to know 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 parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) If there is reason to believe that the case involves an Indian child, the court must require the agency to proceed in accordance with section 224.2(e).

(4) If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in section 224.2(g) that the child does not meet the definition of an Indian child.

~~(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) * * *

(2) The findings and orders that must be made on the record are:

(A)–(B) * * *

(C) Reasonable efforts, or when it is known or there is reason to know the child is an Indian child, active 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) Detention hearing; rights of child, parent, Indian custodian, or guardian (§§ 311, 319)

At the detention hearing, the child, the parent, Indian custodian, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

(1) * * *

(2) Any person examined by the court under section 319. If the child, parent, Indian custodian, Indian child's tribe, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

(d) No parent, Indian custodian, or Indian child's tribe or guardian present and not noticed (§ 321)

If the court orders the child detained at the detention hearing and no parent, Indian custodian, or Indian child's tribe or guardian is present and no parent, Indian custodian, or Indian child's tribe or guardian has received actual notice of the detention hearing, a parent, Indian custodian, or Indian child's tribe or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.

(e) Hearing for further evidence; prima facie case (§ 321)

If the court orders the child detained, and the child, a parent, an Indian custodian, an Indian child's tribe, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to establish the prima facie case, the child must be released from custody.

Rule 5.676. Requirements for detention

(a) Requirements for detention (§ 319)

No child may be ordered detained by the court unless the court finds that:

(1) * * *

(2) Continuance in the home of the parent, Indian custodian, or guardian is contrary to the child's welfare; and

(3) * * *

(b) Additional requirements for detention of 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. The court must state the facts supporting this finding on the record.

~~(b)~~(c)* * *

(d) Additional evidence required at detention hearing for Indian child

If it is known, or there is reason to know the child is an Indian child, the reports relied on 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, Indian custodian, and tribe about the hearing under section 224.3;

(3) If the child's parents and Indian custodian 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 custodian;

(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 custodian 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) In determining whether to release or detain the child under (a), the court must consider the factors in section 319~~(d)~~(f).

(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 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and whether those efforts have been successful. Those active efforts must be documented in detail in the record, and the court must make one of the following findings:

(A) Active efforts have been made and were successful; or

(B) Active efforts have been made and were not successful; or

(C) Active efforts have not been made; and

(D) The court orders the department to initiate or continue services in accordance with 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 to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family 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) and where it is known, or there is reason to know the child is an Indian child, subdivision (f) of this rule.

(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)(3)~~(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 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 by clear and convincing evidence good cause exists not to follow the placement preferences in accordance with rule 5.485.

(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 (§ 319.4)

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 before 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, 309, 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 section 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) * * *

(d) Timing

Notwithstanding any other law, if a minor has been removed from the custody of the parents or Indian custodians or guardians, a continuance may not be granted that would result in the dispositional hearing, held under section 361, being completed more than 60 days, or 30 days in the case of an Indian child, after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring a continuance. If the court knows or has reason to know that the child is an Indian child, the absence of the opinion of a qualified expert witness must not, in and of itself, support a finding that exceptional circumstances exist.

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, the 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.*

Form 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 form GC-210(CA), *Guardianship Petition—Child Information Attachment* form. 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 form ICWA-010(A), *Indian Child Inquiry Attachment,* or page 5 of form 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, including a reservation, rancheria, Alaska Native village or other tribal trust land?
   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. You have reason to believe the child is an Indian child if any of the people you question answers yes to any of your questions. 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.

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 or tribes, 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. You have reason to know:

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).

Tips 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 access to the Federal Register list, and other resources related to ICWA, on the Bureau of Indian Affairs website at 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 form 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, § 224.3(e).)

CHILD'S NAME:	CASE NUMBER:

1. Name of child:

2. (Check one)

☐ I have not yet been able to complete the inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry. I 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 this person has completed inquiry by asking the child, the child's parents, and other required and available persons about the child's Indian status. The person(s) questioned are:

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, rancheria, Alaska Native village or other tribal trust land.

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 possesses 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

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, rancheria, Alaska Native village, or other tribal trust land.

   e. ☐ The child is a resident of or is domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.

   f. ☐ The child is or has been a ward of a tribal court.

   g. ☐ Either parent or the child possesses an Indian identification card indicating membership or citizenship in an Indian tribe.
   Name of tribe(s) *(name each):* _____
   Membership or citizenship number *(if any):* _____

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]

Welfare & Institutions Code, § 224.2;
Family Code, § 177(a);
Probate Code, § 1459.5(b);
Cal. Rules of Court, rule 5.481
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**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 additional 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, § 224.3.)*
   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 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 former names or aliases):*	Name *(include 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)	**Mother's Biological Grandmother (Child's Maternal 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)	**Mother's Biological Grandfather (Child's Maternal Great-grandfather)**
Name *(include former names or aliases):*	Name *(include 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 former names or aliases):*	Name *(include 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 Biological Ancestors	**Information on Indian Ancestry of Other Lineal Biological 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:

☐ More information on lineal biological ancestors is attached on a separate sheet.

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 father is named on birth certificate. ☐ Unknown
b. ☐ Biological 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 named in 1.

7. Has the child named in 1 or any members of the child's 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, rancheria, an allotment or in an Alaska Native village or other tribal trust land?
☐ 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 named in 1 *(check all that apply):*

a. ☐ 1906 Final Roll Name of relative listed on roll:
Relationship to child named in 1:

b. ☐ Roll of 1924 Name of relative listed on roll:
Relationship to child named in 1:

c. ☐ California Judgment Roll. Name of relative listed on roll:
Relationship to child named 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 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 224.3.) 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 224.3.) 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 224.3.) Each envelope was sealed and deposited with the United 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 tribal chairperson or designated authorized agent for service.

☐ Additional tribes served listed on attached form ICWA-030(A)

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:	
NOTICE OF DESIGNATION OF TRIBAL REPRESENTATIVE IN A COURT PROCEEDING INVOLVING AN INDIAN CHILD	CASE NUMBER: RELATED CASES *(if any)*:

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:

Form Adopted for Optional Use
Judicial Council of California
ICWA-040 [Rev. January 1, 2020]

Family Code, § 177(a);
Probate Code, § 1459.5(b);
Welfare and Institutions Code, § 224.4;
Cal. Rules of Court, rule 5.534(i)
www.courts.ca.gov

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)

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 a 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) ☐ After conducting an evidentiary hearing on *(date),* as detailed on the record, the party opposing the transfer has established that there is good cause not to transfer the proceeding to tribal court.

(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 the 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

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 *(specify):*
   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 or 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 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]

25 C.F.R. § 23.113(b)(2);
Welfare & Institutions Code, § 319.4;
www.courts.ca.gov

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 because 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):* _____
      (time): _____ *(location):* _____

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

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 *(specify):*
   - ☐ Parent's attorney
   - ☐ Parent's 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

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 *(check one):*

a. ☐ Inquiry has been made by *(insert name)* as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)* and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

2. c. ☐ 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 duty 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.

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.)

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 and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)* and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

c. ☐ Inquiry has been made by *(insert name)* as to 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.

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:	
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 224.3; 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, §§ 361.31, 361.7, 366.24, 366.26, 727.3, 727.31, 727.4, 16501.1;
Cal. Rules of Court, rules 5.486, 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 cultural 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 result in 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 18.)

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 18.)

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 18.)

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 18.)

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 not 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) ☐ A diligent 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) ☐ A diligent search was made for a placement with a member of the child's extended family, in 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) ☐ A diligent search was made for a placement with a member of the child's extended family, in 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 by clear and convincing evidence 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) ☐ A diligent 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 diligent 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 by clear and convincing evidence 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 necessary.

19. ☐ The child's placement is appropriate.

20. ☐ The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.

21. ☐ 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.

22. ☐ The child is, or there is reason to know the child is, an Indian child. Notice has been provided as required by Welf. & Inst. Code, § 224.3, and proof of such notice has been filed with the court.

23. ☐ 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.)*

24. ☐ All prior orders not in conflict with this order will remain in full force and effect.

25. ☐ Other *(specify):*

26. ☐ 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

27. The ☐ Parent *(name):* ☐ Mother ☐ Father

☐ Parent *(name):* ☐ Mother ☐ Father

☐ Indian custodian *(name):*

☐ Child

☐ Other *(name):*

have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____ _____

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 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.

Form Approved for Optional Use
Judicial Council of California
JV-405 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 319, 322;
Cal. Rules of Court, rule 5.672
www.courts.ca.gov

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 there is no reason to believe or reason to know the child is an Indian child. ICWA does not apply; or
       (2) ☐ The court finds there is reason to believe the child is an Indian child; and *(check one):*
          (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 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; or
          (b) ☐ The agency is required to exercise 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 provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and
          (c) ☐ Notice has been provided as required by law; and
          (d) ☐ 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.

CHILD'S NAME:	CASE NUMBER:

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.

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 Welf. & Inst. Code, § 224.3 of the 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

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 there is no reason to believe or reason to know the child is an Indian child and ICWA does not apply; or
   b. ☐ The court finds there is reason to believe the child is an Indian child; and
      (1) ☐ The agency has completed further inquiry as required by 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
      (2) ☐ 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.
   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; or
      (2) ☐ The agency is required to exercise 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 provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and
      (3) ☐ Notice has been provided as required by law; and
      (4) ☐ 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. § 1922.

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, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(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.

h. Services, including those set forth in item 17, 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.*

16. ☐ **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

a. ☐ The evidence includes all of the requirements of Welf. & Inst. Code, § 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.

CHILD'S NAME:	CASE NUMBER:

16. 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;

☐ In a foster home licensed, approved, or specified by the child's tribe;

☐ In 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 by clear and convincing evidence 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 Welf. & Inst. Code, § 224.3 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.

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.

CHILD'S NAME:	CASE NUMBER:

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

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 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]

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.

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

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 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 witness 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 or 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 that provides reason to know 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 of which 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 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.

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, were 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 not 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.

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: 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 made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. If active efforts were made, those efforts have proved ☐ successful ☐ 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]

DISPOSITIONAL ATTACHMENT: APPOINTMENT OF GUARDIAN
(Welf. & Inst. Code, § 360(a))

Welfare and Institutions Code, § 360(a);
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

JV-421

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT

(Welf. & Inst. Code, §§ 361, 361.2)

1. ☐ The child is a person described by Welf. & Inst. Code, § 300 *(check all that apply):*

   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)

   and is adjudged a dependent of the court.

Circumstances justifying removal from custodial parent

2. ☐ There is clear and convincing evidence of the circumstances stated in Welf. & Inst. Code, § 361 regarding the persons specified below *(check all that apply):*

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

3. ☐ The child is 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 cultural 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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):*

Form Approved for Optional Use
Judicial Council of California
JV-421 [Rev. January 1, 2020]

42 U.S.C. § 675; 25 U.S.C. § 1912;
Welfare and Institutions Code, §§ 224.1, 361, 361.2, 361.31, 361.5, 36.7, 16501.1;
Cal. Rules of Court, rules 5.690, 5.695
www.courts.ca.gov

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. ☐ The child is an Indian child or there is reason to know 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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 18 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 18 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 a 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):*

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 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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):*

Form Approved for Optional Use
Judicial Council of California
JV-432 [Rev. January 1, 2020]

Welfare and Institutions Code, § 366.21(e);
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;

   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family member, Indian custodians, and the 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. The active efforts have proved ☐ successful ☐ 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:

JV-433

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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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):*

Form Approved for Optional Use
Judicial Council of California
JV-433 [Rev. January 1, 2020]

SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED
(Welf. & Inst. Code, § 366.21(e))

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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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 cultural 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):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER 12-MONTH PERMANENCY HEARING (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

1. **Twelve-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify)*:	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-435 [Rev. January 1, 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. ☐ 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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-435, 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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-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):*

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

Form Approved for Optional Use
Judicial Council of California
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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the 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. The active efforts have proved ☐ successful ☐ 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 cultural 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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

Form Approved for Optional Use
Judicial Council of California
JV-438 [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. c. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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 a 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 is *(specify date):*

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.

Form Approved for Optional Use
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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;

b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the 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. The active efforts have proved ☐ successful ☐ 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 cultural 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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

Form Approved for Optional Use
Judicial Council of California
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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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 a 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 is *(specify date):*

CHILD'S NAME:	CASE NUMBER:

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED

(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
   a. ☐ The matter is continued to the date and time indicated in form JV-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ Adiligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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, § 366.25 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 is *(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:

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.

Form Approved for Optional Use
Judicial Council of California
JV-455 [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:

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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
    b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the 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. The active efforts have proved ☐ successful ☐ 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 provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. These efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with 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 the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians, and the 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. The active efforts have proved ☐ successful ☐ 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 *(name):* ; and
   b. ☐ Evidence regarding the prevailing social and cultural 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 25 U.S.C. § 1903; or
   b. ☐ A diligent 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in 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. ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 by clear and convincing evidence 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 a 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 is *(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.

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. Gender:

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.)

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 and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

   b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)* and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

   c. ☐ Inquiry has been made by *(insert name)* as to 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.

SPRING 19-42

Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children (Adopt Cal. Rules of Court, rule 5.484; amend rules 5.480, 5.481, 5.482, 5.483, 5.550, 5.570, 5.668, 5.674, 5.676, 5.678, 5.690, and 5.725; amend and renumber rules 5.484 5.485, and 5.486; renumber rule 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)

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

	Commenter	Position	Comment	Committee Response
1.	Agua Caliente Band of Cahuilla Indians By: Joanne Willis Newton Law Office of Joanne Willis Newton Escondido, CA	NI	*The entire comments are attached as appendix A: Throughout the rules it sometimes refers to Indian custodian (singular) and other times Indian custodians (plural) this should be consistent throughout the rules. Rule 5.480 - Conservatorships are for adults and therefore would not meet the definition of "child custody proceeding" in ICWA. It's true that ICWA can now apply pursuant to state law to an Indian child who is a non-minor dependent, but in a guardianship case arising under the WIC, the case would remain a guardianship; it would not become a probate conservatorship. Remove the words conservator and conservatorship throughout the rules. Rule 5.481(a)(4)(C) – The specific details on how to contact a tribe, as outlined in 25 CFR section 23.105 should be set out here to improve inquiry and notice compliance. This is one of	The proposal was revised in response to this comment. The Forum and Committee have considered this comment but decided to retain the conservatorship language consistent with section 1459.5 of the Probate Code. Although generally conservatorships apply to adults, an individual who has previously been married and whose marriage has been dissolved, is subject to conservatorship proceedings rather than guardianship proceedings under the Probate Code even if that individual is under the age of 18. Accordingly, section 1459.5(a)(3) of the Probate Code stipulates that ICWA requirements apply to these conservatorship proceedings if the proposed conservatee comes within the definition of "Indian child". The Forum and Committee considered this comment but concluded that, consistent with Judicial Council policy, not to repeat the text of the regulations in the rules of court. Instead the Forum

	Commenter	Position	Comment	Committee Response
			the questions we most often get at Tribal STAR trainings from social workers. The word "tribe" should be capitalized throughout the rules, as it is in 25 CFR Part 23. Rule 5.481(b) – Add a subsection stating: Information that a child has Native American ancestry does not in and of itself provide reason to know the child is an Indian child. There must be some information suggesting that the child is an Indian child (i.e. a child who is a member of a federally-recognized Tribe or a child who is eligible for membership in a federally-recognized Tribe and has a parent who is a member of such a Tribe). 5.481(b)(3)(A) – remove the word that after "reason to know" in the first line. 5.481(b)(3)(B) – revise this section to apply when it is known that the child is an Indian child and add a new section (C) to apply when there "is reason to know" rather than it being known. Add a subsection (4) to rule 5.481(b) to specify that a tribe's determination of membership status is conclusive and to clarify that enrollment is not required unless the tribe confirms in writing that	and Committee have included an advisory committee comment. Generally the words state, federal, etc. are not capitalized when they are being referred to in a general manner (ie. state and federal rules…) and are only capitalized when they are part of a proper name (ie. State of California). Similarly the word tribe is generally not capitalized when used generally and not referring to a specific tribe. (see AMA Writing Style guide.) The Forum and Committee considered this comment, but concluded that it is not appropriate to create an evidentiary standard in the rule of court that is not expressly set out in the statute or the regulations. The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			enrollment is a prerequisite for membership in the tribe.	
			Rule 5.481(c)(1) – take out the word "that" after "reason to know" in the first line. Remove "and conservatorship" in fourth line. Change statutory reference in eighth line to 224.3 rather than 224.2.	The proposal was revised in response to this comment.
			Include language to require notice for every subsequent hearing. As drafted, the rule suggests that notice is only required for certain hearings, such as detention, disposition and the 366.26 hearing. It is required for every hearing held in an Indian child custody proceeding. The rule should make it clear that once notice is triggered, notice must be provided for all hearings in the proceeding.	The Forum and Committee considered this comment but concluded that the proposal to require formal ICWA notice for each hearing is inconsistent with the requirements of the federal regulations and the Welf. & Inst. Code as amended by AB 3176. As revised, Welf. & Inst. Code 224.3(a) & (b) require ICWA notice only for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement. However, the proposal was revised to clarify that the where a tribe has been identified, the tribe is entitled to notices for other hearings in accordance with section 224.3(g).
			Rule 5.482(a)(1) – remove word "that" after reason to know in first line.	The proposal was revised in response to this comment.
			Why are (a)(2) and (3) referenced as exceptions to the 10-day rule but shown as deleted below? Language consistent with WIC 224.3(d) provisions regarding exception to 10-day rule and continuances should be reflected in (a)(2) and (3).	This error has been corrected. Subsection subsections (a)(2) and (3) were reinstated in response to this comment.
			Revise subsection (f) to add to existing language the specific examples of "active efforts" set out in 25 CFR section 23.2 that involve consultation	Subsections (e) and (f) address requirements related to the placement of a child and do not relate to active efforts, so the Forum and Committee

	Commenter	Position	Comment	Committee Response
			with Tribe, e.g., (1), (2), (3), (4), (5), (8), (10)]	declined to revise the proposal in response to this comment.
			Rule 5.483(a)(1) – add the word "already" before "a ward of a tribal court…" in first line	The proposal was revised in response to this comment.
			It would be helpful to clarify whether a "ward" is a child who is the subject of any tribal court custody orders or only custody orders vesting custody with the tribe for protective reasons.	The Forum and Committee considered this comment but determined that it was not appropriate to create this legal standard through rule of court when it was not established in the federal or state statutes or regulations.
			Revise subsection (a)(3) as follows: This section does not preclude an emergency removal pursuant to Welfare and Institutions Code section 319 if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the local agency to the tribe.	The proposal was revised in response to this comment to add references to the emergency removal provisions in the federal statute and regulations and the Welfare and Institutions Code.
			Revise subsection (c) to reflect the requirements of 25 CFR Section 23.116 by adding the following to the end of the existing text: Upon receipt of a transfer petition, the court must ensure that the Tribal court is promptly notified in writing of the transfer petition. The notification may request a timely response regarding whether the Tribal court wishes to decline the transfer."	The proposal was revised in response to this comment.
			Revise subsection (d)(1)(B) as follows: The tribal court of the child's tribe or, if the	The Forum and Committee did not follow this recommendation. The subsection regarding lack of a tribal court was removed from the rule to conform

	Commenter	Position	Comment	Committee Response
			child's tribe does not have a tribal court, the child's tribe declines the transfer.	it to 25 C.F.R. §23.117 which lists only objections from either parent, declination of jurisdiction by the tribal court or a finding of good cause as reasons not to transfer. Similarly AB 3176 revised WIC 305.5 (e) by removing previous subsection (1)(B) which had discussed the existence of a tribal court.
			Revise subsection (d)(2)(E) as follows: Socioeconomic conditions or ~~any negative perception~~ the perceived adequacy of tribal or BIA	Subsection (d)(2) was revised in its entirety to mirror the requirements of WIC 305.5(e)(2).
			Revise rule 5.484(a) as follows**:** 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, and ~~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: (4) The steps taken to provide notice to the child's parents, Indian custodians, and tribe about the emergency proceeding;	The proposal was revised in response to this comment. The proposal was revised in response to this comment.
			Revise the last sentence of subsection (b) as follows: ……. the court shall order the child returned	The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			to the physical custody of the parent(s) ~~or parents~~ or ~~of~~ Indian custodian(s).	
			Add the words "if applicable" to the end of subsection(c) (2).	The Forum and Committee declined to follow this recommendation as unnecessary and inconsistent with the statute.
			Revise rule 5.485 (b) (1) as follows: ~~Unless the court finds good cause to deviate from them the contrary, w~~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, unless the court finds good cause to deviate from those placement preferences.	The Forum and Committee declined to follow this stylistic recommendation.
			Revise rule 5.486 to add "Removal" to the title**.**	The Forum and Committee declined to follow this recommendation because rule 5.486 does not apply to removals.
			Revise rule 5.486(a) [to add various requirements concerning evidentiary standards for removal and placement of an Indian child. See specific recommended language in the attachment].	The Forum and Committee declined to follow this recommendation because the issue of evidentiary standards for placement of an Indian child are addressed in Rule 5.485 (Formerly 5.484).
			Revise subsection (b)(3) by adding the words "tribal customary adoption without termination of parental rights," immediately following "the child's tribe has identified…"	The proposal was revised in response to this comment.
			Add a subsection (d) to rule 5.531 as follows:	

	Commenter	Position	Comment	Committee Response
			(d) Nothwithstanding (c), if it possesses the capability, the court should allow alternative methods of participation in child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods. This reflect 25 CFR section 23.133.	The Forum and Committee have considered this comment and acknowledge that it is consistent with the federal regulations, however, the Forum and Committee have concluded that it is not appropriate to implement this through rule of court when there is no statutory basis in the WIC or other California statute for this provision.
			Remove the word "that" immediately following reason to know in subsection (c)(1)(A) of rule 5.668	The proposal was revised in response to this comment.
			Revise rule 5.676 (d) by removing the word "that" immediately following "reason to know" in the first line and revise subsections (2) and (8) as follows: (2) The steps taken to provide notice to the child's parents, Indian custodians, and tribe about the hearing pursuant to ~~this section~~the Welfare and Institutions Code section 224.3;	The proposal was revised in response to this comment. The proposal was revised in response to this comment.
			(8) If the child is believed to be a ward of a tribal court or to reside or be domiciled on a reservation in which the…	The proposal was not revised because the proposed revision does not align with the language of the statute at WIC 319(b)(8).
			Revise rule 5.678 (c)(2) to remove the word "that" following "reason to know" in the first line.	The proposal was revised in response to this comment.
			Add language to rule 5.678 to address what the court must do if it finds that the active efforts requirement has not been met, i.e., order the child returned and that active efforts be made.	The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			Revise subsection 5.678(c)(2)(A) as follows: Active efforts have been made and were successful; and create a new subsection (B) as follows: Active efforts have been made and were not successful; or Renumber subsection (B) and (C) accordingly.	The proposal was revised in response to this comment.
			Delete subsection (f)(2) of rule 5.678. WIC does not permit detention hearings to be continued for 30 days. 25 CFR section 23.113(e) is inconsistent with state law in this regard. This subsection of the rule should be deleted.	Notwithstanding this comment, WIC 319(e)(2) specifies what is required to continue a detention hearing beyond 30 days. The rule is consistent with the statutory language.
			Delete subsection (f)(2)(C). An Indian child custody proceeding is initiated by the filing of the 300 petition (or other petition in probate or family court). There is never a scenario in which a 300 petition could not be filed within 30 days.	The Forum and Committee do not agree that filing a petition is sufficient to "initiate an Indian child custody proceeding…" WIC 224.1(l) defines an emergency proceeding as the initial petition hearing held pursuant to section 319. Under the Guidelines issued by the BIA the initiation of a child custody proceeding requires a proceeding "…to which the full set of ICWA protections would apply." (see page 25) In California this is generally not until the dispositional hearing at which a QEW would testify.
2.	Alliance for Children's Rights Per Kristin Power, Senior Policy Associate	NI	Our experience representing caregivers in probate proceedings provides a breadth of information on the knowledge caregivers and the court would find most useful in understanding ICWA and associated court processes. We offer these comments to provide further clarification to ensure compliance.	

	Commenter	Position	Comment	Committee Response
			Page 17, Rule 5.481(c)(1) Notice – currently 5.481(b)(1) The current and proposed rule both state that notice requirements under ICWA are triggered for probate if it is known or there is reason to believe that an Indian child is involved in the proceedings. However, the proposed language states that notice must be given for all hearing that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement. The new language fails to provide an option under which notice would be triggered for probate court because probate proceedings do not result in foster care placement, termination of parental rights, preadoptive placement or adoptive placement. To include probate, the Judicial Council may want to consider amending their new proposed language to read as follows: "for all hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, appointment of guardian or adoptive placement. As probate guardianship is one of the many available child custody options, we think inclusion of such information in this form offers judges and court personnel consistent and clear information to better ensure ICWA compliance.	The proposal was revised in response to this comment. A guardianship of the person under the California Probate Code comes within the definition of "foster care placement" under the Indian Child Welfare Act and California law if the case involves and Indian child. Under 25 U.S.C. §1903(1)(i) a foster care placement includes "…any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or **the home of a guardian or conservator** where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. This definition is incorporated into the California Probate Code at section 1449 (c). The ICWA notice requirements are applied to probate proceedings through Rule 7.1015 (c).
3.	California Lawyers Association Executive Committee of the Family Law Section	A	FLEXCOM agrees with this proposal.	No response required.

	Commenter	Position	Comment	Committee Response
	By: Saul Bercovitch, Director of Governmental Affairs Sacramento, CA			
4.	California Tribal Families Coalition Per: Delia Sharpe, Executive Director	A	The California Tribal Families Coalition (CTFC), a non-profit organization dedicated to protecting Indian children, families and tribes, submits these comments on behalf of its member tribes to the Invitation to Comment regarding the "Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children." CTFC was the sponsor of AB 3176 and seeks through these comments to ensure the intent of the legislation is carried forward through implementing regulations, rules and forms. To that end, we find the proposed rules and forms closely mirror the language of AB 3176, and where appropriate, incorporate language of the 2016 federal ICWA regulations as additional guidance. In order to achieve consistency in the application of ICWA, this mirroring state and federal law and regulations is critical. We strongly recommend retaining the language of the rules and forms as proposed, limiting wherever possible interpretation of applicable laws and regulations. <u>Specific comments:</u> **Rule 5.481 Inquiry** *The December 2016 – Guidelines for Implementing the Indian Child Welfare Act* (BIA ICWA Guidelines) provide the following guidance regarding how often inquiry must occur: Inquiry each proceeding. The rule does not require an inquiry at each hearing	No response required The proposal was revised in response to this comment to indicate that inquiry had to be made on the record at the beginning of each "proceeding".

	Commenter	Position	Comment	Committee Response
			within a proceeding; but, if a new child-custody proceeding (such as a proceeding to terminate parental rights or for adoption) is initiated for the same child, the court must make a finding as to whether there is "reason to know" that the child is an Indian child. In situations in which the child was not identified as an Indian child in the prior proceeding, the court has a continuing duty to inquire whether the child is an Indian child. (citing *In re Isaiah W.*, 1 Cal.5th 1 (2016).) As stated in Rule 5.481, the California standard includes additional language making inquiry an affirmative and continuing duty. We recommend adding clarifying language that a finding on the record regarding inquiry must be made at each proceeding. **Rule 5.690 General conduct of disposition hearing** We recommend adding the language regarding continuances from amended WIC § 352(b): "a continuance shall not be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days, or 30 days in the case of an Indian child…" **Do the proposed findings and orders set out in forms JV-405 and JV-410 correctly reflect the distinction between "reason to believe" and "reason to know," and the obligations triggered by each level of information?** Regarding Inquiry and the "Reason to Know" standard, the *BIA ICWA Guidelines* state the following:	The Forum and Committee recognize the need to address the specific requirements governing continuances in cases governed by ICWA. The Forum and Committee have addressed these by revising Rule 5.550 governing continuances, in addition to revising rule 5.690.

	Commenter	Position	Comment	Committee Response
			The regulation lists factors that indicate a "reason to know" the child is an "Indian child." State courts and agencies are encouraged to interpret these factors expansively. When in doubt, it is better to conduct further investigation into a child's status early in the case; this establishes which laws will apply to the case and minimizes the potential for delays or disrupted placements in the future. States or courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child. The proposed findings and orders in forms JV-405 and JV-410 reflect the intention of AB 3176 in both distinction between "reason to believe" and "reason to know" and the obligations each trigger. However, we recommend the important guidance from the BIA be added to the forms. Additionally, the following guidance from the BIA ICWA Guidelines would be useful guidance in the forms: Treating the Child as an Indian Child, unless and Until Determined Otherwise This requirement (triggered by a "reason to know" the child is an "Indian child") ensures that ICWA's requirements are followed from the early stages of a case and that harmful delays and duplication resulting from the potential late application of ICWA are avoided. For example, it makes sense to place a child that the court has reason to know is an Indian child in a placement that complies with ICWA's placement preferences from the start of a proceeding, rather than having to consider a change a placement later in the proceeding once the court confirms that the child actually is an Indian child. Notably, the early application of ICWA's	The Forum and Committee have considered this comment but concluded that it is not appropriate to include this lengthy language in the forms.

	Commenter	Position	Comment	Committee Response
			requirements—which are designed to keep children, when possible, with their parents, family, or Tribal community—should benefit children regardless of whether it turns out that they are Indian children as defined by the statute. If, based on feedback from the relevant Tribe(s) or other information, the court determines that the child is not an "Indian child," then the State may proceed under its usual standards. **Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?** It is the strong position of CTFC that the use of forms JV-419 and JV-419(A) do not waive the rights and protections of the Indian Child Welfare Act. Neither federal nor state law provide for such a wavier of ICWA's protections. ICWA is often called the "gold standard" of child welfare because of the protections it provides to children, families and their tribes in difficult, often vulnerable, situations. We are hopeful the implementation of AB 3176 will serve to increase ICWA compliance in California, thereby protecting and promoting the health, safety and welfare of Indian children, families and their tribes. The commitment of state agencies is necessary and appreciated. Thank you for allowing us an opportunity to submit these comments.	No response required. No response required.

5.	Children's Law Center of California By: Sue Abrams, Director of Policy & Training Los Angeles, CA	NI	*The entire comments are attached as appendix A Rule 5.481(a) – • change the word "seeking" to "requesting" in line 2; • Include "preadoptive placement" after "termination of parental rights"; • Revise the language after "…all proceedings identified in rule 5.480." as follows: This imposes a duty on the court, court-connected investigators, county welfare departments, probation departments, licensed adoption agencies, adoption service providers, investigators, petitioners, appointed guardian or conservators of the person, and appointed fiduciaries. ~~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.~~ • Include "preadoptive placement" after "termination of parental rights" in subsection (1) and after "custody and control of one or more parents" in subsection (2); • Revise the language of subsection (2)(C) as follows: (C) Order the parent, Indian custodian, guardian or any other relative present in	 The Forum and Committee considered this comment and decided not to make this change because the words "seeking" and "requesting" are both used extensively throughout the division five rules with respect to seeking or requesting orders. The proposal was revised in response to this comment. The Forum and Committee considered this comment but determined the revision was not necessary. The proposal was revised in response to this comment. The Forum and Committee declined to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know of have reason to know the child is an

			court to complete the *Parental Notification of Indian Status* Form (ICWA-020). ~~o~~Order ~~the parent, Indian custodian, or guardian if available, to complete Parental Notification of Indian Status (form ICWA-020).~~ • Add the following language to the end of subsection (4)(C): Any information obtained by the petitioner must be documented in the ICWA-020 form. If the petitioner had previously sent notices and the information obtained is new information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020 then the petitioner must complete a new ICWA-020 with all the information and re-notice all the identified Tribes. It is important to ensure this language is included because it is the most common ground in which ICWA reversals come down from the Court of Appeal. Rule 5.481(b) • Revise the language in subsection (1) as follows: (1) The court has reason to know a child involved in a proceeding is an Indian child if: ~~the child is an Indian child if:~~ • Revise the language in subsection (3)(A) as follows: (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	Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance. The Forum and Committee did revise the proposal in response to this comment, but not in the exact language set out in the comment. The comment would require all information to be provided to a tribe or tribes on form ICWA-030, however, under the regulations and revised California statute, ICWA Notice in form ICWA-030 is only required when there is "reason to know" and only for specified hearings. The federal regulations and California statute otherwise allow the information to be provided to tribes by email, fax or phone. So long as there is sufficient evidence that all relevant information has been provided to the tribe(s), it does not need to be on the ICWA-030 form. The proposal was revised in response to this comment. The Forum and Committee considered this comment, but concluded that the proposed language of the subsection was sufficiently clear without this change.

			apply. Notwithstanding this determination, if the court or a party subsequently receives any information required by section 224.3 that was not previously available or included in the notice issued under Section 224.3, the court must order the party seeking placement shall provide the additional information to any tribes entitled to notice under section 224.3 and to the Secretary of the Interior's designated agent and the court must reconsider the previous ICWA finding. Rule 5.481(c) • Revise subsection (1) by adding the word "or" after "probate or guardianship and conservatorship proceedings,". Correct the statutory reference from 224.2 to 224.3 Rule 5.482 Revise subsection (a)(1) and add a subsection (2) as follows: [see complete proposed language in appendix A] The changes the JC made would strike through an important provision regarding the detention hearing. Their language keeps in section (1) a reference to (a)(2)&(3) but they delete it from the language. I put it together in one paragraph which includes all the language. This language makes it in compliance with the WIC section 224.3 and the previous rule of court.	The statutory reference was corrected in response to this comment, however, the Forum and Committee declined to add the word "or" as suggested because it would have altered the meaning inconsistent with the statute. The proposal has been revised to reinstate the language in the former sections 5.482(2) and (3).

			• Revise subsection (b) as follows: Proof of compliance with the notice provisions must be filed with the court in advance of the hearing except for a hearing held pursuant to Section 319 of the Welfare and Institutions Code and must include: (1) Notice of Child Custody Proceedings for Indian Child (form ICWA-030), (2) Copies of the notices sent to all parties, tribes, parents, and Indian Custodians, and (3) All return receipts and responses received to the notices. Revise subsection (c) as follows: (c) Determination the ICWA Is Not Applicable ~~When there is no information or response from a tribe~~ (1) If the court makes a finding that proper and adequate inquiry and due diligence were conducted pursuant to section 224.2 and 224.3 of the Welfare and Institutions Code and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) does not apply to the proceedings. ~~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~~	The proposal was revised in response to this comment. The proposal was revised in response to this comment.

			~~prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child~~. (2) The determination of the court that the Indian Child Welfare Act of 1978 does not apply in subsection (c)(1) is subject to reversal based on sufficiency of the evidence. The court shall reverse it's determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3 of the Welfare and Institutions Code. ~~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.~~ I do not think they can take out this section without guidance as to what to do when you have done everything and there is no response because it is a common situation. Since tribes get over 20,000 inquires a day sometimes they are not always timely to respond to inquiries and it would delay proceedings without some direction. • Revise subsection (d) as follows: The Indian child's tribe and Indian custodian have an absolute right to intervene in the proceedings. The tribe or Indian custodian may intervene, orally or in writing, at any point in the proceedings. ~~and~~ The tribe, at it's	The proposal was revised in response to this comment. The proposal was revised in response to this comment, to clarify that the right to intervene is not discretionary, although the exact language recommended was not adopted.

			own discretion 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. I think it is good to clearly state this since some court are confused if they have the absolute right to intervention Rule 5.483 • Add the following to the beginning of subsection (a)(1): At any stage of the proceeding as defined under Section 224.1 of the Welfare and Institutions Code • Revise subsection (a)(3) as follows: (3) This section does not preclude a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 of the Welfare and Institutions Code if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe. ~~an emergency removal.~~ • Revise subsection (b) as follows: (b) The state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the	The proposal was revised in response to this comment. The proposal was revised in response to this and other comments. The Forum and Committee considered the comment but concluded the requested revisions are unnecessary.

			Indian custodian, or the child's tribe, unless the state court finds good cause under subdivision (d) not to transfer the proceedings. • Change the word must to shall in subsection (d)(2). • Revise subsection (d)(2)(A), (D) and (E). • Rule 5.484 – We recommend many changes to this section as follows to reflect the actual code section language and ensure that it matches with the federal as well as state codes. We suggest revising the rule as follows: [see attached comments] Rule 5.484~~4~~5 • Revise subsection (b)(1) as follows: [See appendix for complete recommended language] It is very important to put in the language of clear and convincing evidence standard as this was in dispute prior to the codification in the code. • Add the following language to the end of the first sentence of subsection (2):	This suggested change is not consistent with the style for the California Rules of Court, as set forth in rule 1.5(b)(1). The proposal has been revised to follow the language in WIC 305.5(e)(2)(A) through (E). The Forum and Committee have considered this comment but concluded that it is unnecessary to duplicate statutory language regarding social worker duties into the rule of court. The proposed rule of court reflects the requirements of WIC 319 regarding the court duties and requirements. Further, this rule (and other ICWA rules) apply to family and probate proceedings governed by ICWA and therefore do not reference all of the requirements of the WIC. The proposal was revised in response to this comment to add reference to the clear and convincing evidence standard consistent set out in WIC 361.31(i) The language was added as subsection (1) in response to this comment.

			The Indian child shall be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met. • Start a new subsection (3) with the second sentence of subsection (2) and revise as follows: (3) The court may deviate from the placement preference order only if the court finds by clear and convincing evidence there is good cause, which may include the following considerations: • Renumber subsection (3) and (4) and revise subsection (4) (now (5)) as follows: (54) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the placement preference order not be followed. A placement ~~may~~ shall not depart from the placement preferences based on the socioeconomic status of any placement relative to another. A placement shall not depart from the placement preferences 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. • Add a new subsection (6) as follows:	The clear and convincing language was added. The sections have been renumbered. The Forum and Committee declined to follow this recommendation as unnecessary. The Forum and Committee added language to subsection (4) in response to this comment.

			(6) If the court knows or has reason to know that the child is an Indian child and the court finds at the hearing held pursuant to section 319 of the Welfare and Institutions Code that there is good cause to deviate from the placement preferences set forth in Section 361.31 of the Welfare and Institutions Code, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences. This is a very important part that was left out because it discusses their ongoing duty to find a compliant placement (WIC sec. 319(h)(1)(C).) • Add the following language to the end of subsection 5.485(c)(2) In considering if active efforts were taken the court shall consider if the agency utilized the available resources of the Indian child's extended family, tribe, tribal or other Indian social service agencies, and individual Indian caregiver service providers. Active efforts shall include the pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe. It is important to have this language here so it ties in with the active efforts requirement. • Remove the discussion of obtaining tribal membership in subsection (c)(3); • Include the following at the end of	The Forum and Committee declined to follow this recommendation. The substance of the recommended language is already included as 5.485(c)(3).

			subsection (c)(3): The court shall not order a foster care placement or guardianship in a proceeding described in rule 5.480 absent a determination by clear and convincing evidence including the testimony of a qualified expert witness as defined by Section 224.6 of the Welfare and Institutions Code, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This is a very important provision which was not part of the active efforts provision. Rule 5.570 • Revise subsection (h)(1)(B) as follows: (B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. In the case involving an Indian child, the petitioner must show 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. Rule 5.668	The substance of this recommended language is already included in the opening paragraph of rule 5.485(a) The proposal was revised in response to this comment.

			• Revise subsection (c)(1) by adding "At the first appearance in court of each party" at the beginning. • Revise subsection (c)(2) by adding the following at the end: Newly obtained information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020, then the court shall order the petitioner to complete a new ICWA -020 with all the information and re-notice all the identified Tribes. Again important to include because #1 reason for reversal from COA in published ICWA cases is not providing tribes with all the updated information or correcting misinformation. • Revise subsection (c)(3) as follows: When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence as described in rule 5.481 and determines that the Indian Child Welfare Act does not apply as described in subsection (b)(3)(A) of rule 5.481. ~~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.~~ Rule 5.674.	The proposal was revised in response to this comment. The Forum and Committee considered this comment but concluded that it was not appropriate to include here in the rule governing the conduct of this hearing. Instead revisions were made to the language of Rule 5.481(a)(4) confirming the ongoing nature of the obligation to provide information to the tribe(s). The proposal was revised in response to this comment.

			• Revise subsection (b)(2)(E) as follows: When it is known or there is reason to know the case involves an Indian child, the court must make the heightened findings under the Indian Child Welfare Act in order to remove the child from the custody of the parent, or Indian custodian 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.	The Forum and Committee considered this comment, but concluded that it was not necessary. The language in the rule reflects the heightened requirements under the Indian Child Welfare Act.
			• (c)–(e) * * * add Indian custodian to each section	The proposal was revised in response to this comment.
			Rule 5.676. • Revise subdivision (b) as follows: If it is known, or there is reason to know the child is an Indian child, in addition to the requirement in section (a) the court ~~the child~~ may not ~~be ordered detained~~ order an Indian child to be 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.	The Forum and Committee considered this recommendation but did not feel the changes were necessary.
			• Add to subsection (d) ", in addition to the requirements under section (c)" following "…reason to know that the child is an Indian child" in the first line.	The Forum and Committee considered this recommendation but did not feel the changes were necessary.

			Rule 5.678 • Revise subsection (c)(4) as follows: (~~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. If ~~where~~ it is known or there is reason to know the child is an Indian child, the court shall determine if the county agency made active efforts to provide remedial services and rehabilitation programs that would prevent or eliminate the need to detain the child or that would permit the child to return home. • Revise subsection (f)(1) as follows: 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 by clear and convincing evidence good cause exists not to follow the placement preferences pursuant to rule 5.485. **Request for Specific Comments** Proposal appropriately addresses the stated purpose with the additional changes I made to the language. ICWA-020 is sufficiently broad. I believe there needs to be an information sheet here which suggest that the court put a parent or family member under oath and question to get the	The Forum and Committee considered this recommendation and incorporated some of the suggested language into the proposal. The proposal was revised in response to this comment. The Forum and Committee considered this comment but do not feel it is appropriate to mandate such a court process.

			information to provide in the ICWA-030 as well.	
			The distinction between reason to believe and reason to know are not flushed out well in the code/rules of the court or the forms.	The Forum and Committee cannot through rule of court create a legal standard for reason to believe.
			The JV-419 forms do appropriately waive the ICWA rights as stated in the provisions regarding qualified expert witness that it needs to be in writing. I believe there needs to be the tribal representative signing off on this if the tribe has been noticed or the child is identified as a member/citizen.	No response required.
			Gender identify should be on the JV-100 and should include nonbinary. Additionally incorporate language of gender identify if it is known to the petitioner.	No response required.
			Form ICWA-020 #3e Plain language would be more appropriate on these forms – "I am a resident of or I live on a reservation or in an Alaska Native Village."	The Forum and Committee decided to keep the language that is in the federal statute and regulations.
			Form ICWA-060 #5d(3) I think this needs to be changed to: "After conducting an evidentiary hearing on _____ (Date), as detailed on the record, the party that opposed the request for transfer established that there was good cause not to transfer the case to tribal court."	The proposal was revised in response to this request.
			Form ICWA-070 #5 This is not an accurate reflection of the language. There is no requirement of new evidence of changed circumstances in the language of the code, it simply says if the	The Forum and Committee considered this comment but concluded that there is a risk of multiple frivolous applications unless the language is retained.

			emergency which was the original basis for removal is no longer necessary to prevent imminent physical damage or harm to the child. **Form JV-100** #2a Although most tribal membership is based on biological connection that is not the requirements for all tribes, therefore I would recommend taking out the biological child language. **Form JV-320** #8b Need to add #4 that the court made a finding of active efforts #17a(6) The court finds by clear and convincing evidence that there is good cause to depart from the placement preference based on the reasons set forth in the record. This does not account for the other placement preferences in the code. **Form JV-405** #12c(2)(b) subsections (a) and (b) are two specifically different findings under the law – I believe these should be two different check boxes of possible findings. **Form JV-410** #16d Would change to: After an evidentiary hearing on the matter, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences. **Form JV-600** #1f I believe they wanted Gender Identity with option of Male/Female/Nonbinary and a section	The Forum and Committee decided to retain the existing language as it tracks the federal statute. Active efforts are addressed in item 19. The proposal was revised in response to this comment. The proposal was revised in response to this comment. There is no legal requirement for an evidentiary hearing on the matter, but the proposal has been revised to reflect the clear and convincing evidence standard. The proposal was revised to use “gender” rather than “sex”.

			on if the child's gender identity was known to the social worker.	
6.	Joint Rules Subcommittee of TCPJAC/CEAC By: Cory Rada, Senior Analyst Sacramento, CA	A	The proposal is required to conform to a change of law. The Joint Rules Subcommittee notes the following impact to court operations: • Impact on local or statewide justice partners. Local justice partners will be required to use updated and modified forms to address compliance with ICWA. These forms are regularly updated over the years in response to changes in the law. These updates are no different. The cost impact is minimal and not significant. Ultimately, the forms are a cost saver to the justice partners and the Court. Compliance with ICWA is a major appellate issue and non-compliance results in delayed permanency for children and prolonged litigation. The forms are intended and should make it easier for the parties and the Court to comply with ICWA. **Requests for Specific Comments, SPR19-42** Q. Does the proposal appropriately address the stated purpose? Answer: Yes. The changes and modifications to the Rules of Court and the Judicial Council forms are necessary because of changes in federal and state law. Q. 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?	No response required. No response required. No response required. No response required. No response required.

			Answer: Yes. Q. 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? Answer: Yes. Q. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? Answer: Yes and No. Yes, all parties may waive their statutory rights if the waiver is knowing, intelligent and voluntary. ICWA, however, serves the purposes of not just the parties but also the Native American tribal communities. Thus, the Child Welfare Agency has a non-delegable and non-waivable duty to provide notice and to make active efforts if required, which the Tribe may deem satisfied by an express waiver. Q. 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? Answer: The question should be directed at "gender" and not the sex of the child so that the Court can properly address the child in Court which is required by law. The child's biological sex is not as relevant to the Court as the child's gender under the law. Q. Would the proposal provide cost savings? If so, please quantify.	No response required. No response required. The proposal references "gender". No response required.

			Answer: The more the Judicial Council forms bring clarity to Findings and Orders of the Court, the greater the cost savings to the Branch in reduced appeals. This is true when updating the forms on ICWA issues and gender identity issues. 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? Answer: No cost to the Court. These are standard forms and are being updated in regular course. Q. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: Yes. Q. How well would this proposal work in courts of different sizes? Answer: There would be no difference to courts of varying sizes.	No response required. No response required. No. response required.
7.	Los Angeles County Counsel By: Alyssa Skolnick Principal Deputy County Counsel	AM	There is very little if any guidance on how juvenile courts are expected to proceed in the absence of a tribal response now that the 60 day rule has been eliminated. Without the 60 day rule when we do not hear back from a tribe, we will need to proceed as if the ICWA applies, including applying the heightened standards and needing expert testimony before removal or termination of parental rights. Without the 60-day rule, the ICWA will be applied to many non-Indian children.	The Forum and Committee cannot give practice advice, but note that there is nothing in ICWA, the federal regulations or state law that mandates a tribal response or puts a time limit on a tribe's ability to make a determination of a child's status, respond to a notice, or intervene in a case. A court or agency's duty to apply ICWA depends upon the totality of the evidence concerning Indian status. Section 224.2(i)(2) authorizes the court to make a finding at any time that ICWA does not apply after review of evidence of further inquiry and due

				diligence based on an evaluation of the totality of the evidence before the court and whether there is or continues to be evidence supporting a "reason to know".
8.	Orange County Bar Association By: Deirdre Kelly, President	AM	Does the proposal appropriately address the stated purpose? Yes. 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? Yes. • 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? Yes. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? A tribe can waive its rights under ICWA, as could the other parties, but if the tribe does not waive its rights then none of the other waivers would override that refusal. 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	No response required. No response required. No response required. No response required. No response required.

			than sex and add an instruction that gender can include nonbinary? An option for the person to describe their gender preference/identification should be included, e.g. preferred gender: male/female/nonbinary.	The Forum and Committee considered the comment, but decided to leave the current "gender' language as is to be broad enough to cover instances when the child is too young to express a preference regarding gender identification.
9.	Orange County Children and Family Services, Bldg 135C Social Service Agency By: Chuck Griffin Policy Analyst, Policy Development Unit	NI	In reference to JV-320: Item 17 uses the term "exhaustive" regarding search efforts. This would be a new measure where historically we've used "due diligence" regarding search efforts. Agencies and Court are familiar with "due diligence" and its application whereas exhaustive search has no established level of effort. Item 17 also states that "permanent plan complies with placement preferences". I'm unclear regarding the relationship of permanent plan to placement preference as my understanding is they are mutually exclusive. In reference to JV-100: Item 2, Indian Child Welfare Inquiry: The wording states: "I have asked whether the child is or may be a member of an Indian tribe or eligible for	The proposal has been revised in response to this comment to require a "diligent search" rather than exhaustive search, consistent with the language in the federal regulations. (25 C.F.R. 23.2 (4);) and the federal Guidelines H.3 regarding placement preferences. A child's permanent plan under state law, may fall either under the definition of an ICWA foster care placement "…the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated." (25 U.S.C. §1903(1)(i)) or an adoptive placement "…the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption." (25 U.S.C. §1903(1)(iv)) The foster-care or adoptive placement preferences apply to all such placements.

			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)).” It was difficult to determine what the social worker was attesting to. Would the following wording achieve the same purpose? I have asked whether the child is or may be a member of an Indian tribe, eligible for membership or a biological child of a member. Based on information from this inquiry, the Indian Child Inquiry Attachment (form ICWA-010(A)) has been completed and attached. Orange County wishes to thank you for the opportunity to respond to the proposed changes in Court Rules and Forms as they pertain to ICWA. Should you have question, feel free to contact me.	The proposal has been revised in response to this comment, but not exactly as suggested. This proposed revision of the form reflected comments that in some counties the petition is not completed and filed by the social worker or other individual who is responsible for conducting inquiry, but instead by county counsel or some other party. The proposal has been revised to have these as two separate options. The same change has been made on the JV-110 and JV-600 forms.
10.	Superior Court of California, County of Orange Per – Cynthia Beltran, Administrative Analyst, Family and Juvenile Court	NI	**Juvenile Dependency Petition (JV-110)** Revise section 2b, to provide additional space below the section to allow sufficient space for reasons to provided. *Would the proposal provide a cost savings?* No, the proposal would not provide a cost savings. *What would the implementation requirements be for courts?* Judges and staff would be notified of the changes in the rule and forms, but no changes would be needed on procedures or in the case management system. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*	The proposal was revised in response to this comment. No response required. No response required.

			Yes, three months would be sufficient time for implementation.	No response required.
11.	Sacramento County Counsel By: Christopher S. Costa Deputy County Counsel	AM	Question 1: Does the proposal address the stated purpose? -Overall, yes, the proposal addresses the stated purpose. However, the following areas should be included or clarified, as applicable, to provide juvenile court participants additional practical guidance. (1) Addressing Continuances of Hearings/Indian Child Custody Proceedings that Require Initial Formal Notice under WIC section 224.3. As the law is currently written, it appears that all continued hearings, that qualify as Indian child custody proceedings, require compliance with WIC section 224.3 (e.g., certified mail with return receipt). The Rules of Court should clarify that subsequent notifications for continued hearing dates, following the initial formal notice of the proceedings, can be by first class mail. a. WIC section 224.1(d)(1) defines an "Indian child custody proceeding" as "a hearing during a juvenile court proceeding…that may culminate in…foster care placement", etc. WIC section 224.3(a)(1) indicates that "[n]otice shall be sent by registered or certified mail with return receipt requested…Additional notice by first class mail is recommended, but not required." WIC section 224.3(b) says "[n]otice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in an order for foster care placement…" [emphasis added]. WIC section 224.3(b) goes on to say that "[a]fter a	 The proposal has been revised in response to this comment. The Forum and Committee agree with the commenter, that the federal regulations and state law are both silent on the issue of tribal notice when a hearing for which ICWA notice is required is continued. The federal regulations (25 CFR §23.111(a)) stipulate that notice by registered mail, return receipt requested must be sent at the commencement of each "proceeding". The Forum and Committee conclude that similar to the law concerning a parent's right to notice of a continued hearing under Welf. & Inst. Code §366.26 and the specific noticing requirements set out in section 366.23 concerning this hearing, the more stringent noticing requirements apply only to the initial hearing. If the stringent noticing requirements were complied with for the initial hearing and the party is present in court when the hearing is continued that satisfies the parties right to notice of the continued hearing. (*In re Malcolm D.*, (1996) 42 Cal.App.4th 904 at p.913) If the party does not participate in the original hearing they are entitled to receive notice of the continued date that

			tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (H) of paragraph (5) of subdivision (a) need not be included with the notice." b. The above cited subsections of WIC sections 224.1 and 224.3 imply that all continued hearings that qualify as Indian child custody proceedings should meet the requirements of WIC section 224.3(a), unless the tribe intervenes or acknowledges that the child is a member or eligible for membership. However, 25 USC section 1912(a) and 25 CFR section 23.2, subd. (2) (under the definition of "Child-custody proceeding"), indicate that each action (e.g., an action for foster care placement) is a separate child custody proceeding. Thus, under federal law/regulation, an action for a foster care placement is one child custody proceeding (that requires registered or certified mail) and, an action for termination of parental rights is a separate child custody proceeding. c. Therefore, the Rules of Court (and the proposed JV-405 at section 16) should clarify that, after the initial formal noticing under WIC section 224.3 is accomplished (e.g., certified mail with return receipt and all required information included) for a tribe, all subsequent notification for continued hearing dates can be by first class mail. This would alleviate unnecessary burden and costs on child welfare agencies and tribes, given that federal law/regulation only requires that the initial notice of a particular child custody proceeding comply with formal noticing requirements.	is reasonably calculated under all the circumstances to apprise them of the hearing and afford them an opportunity to present any objections (*Id*. at pp. 258-259). Such notice does not need to be by certified mail, return receipt requested.

			(2) Providing Guidance to the Court and Child Welfare Agencies after Completion of Further Inquiry when There is/has Only ever been "Reason to Believe". The Rules of Court should clarify whether WIC section 224.2(i)(2) applies when there has not been a "reason to know" at any previous point in the proceeding. a. WIC section 224.2(g) provides that, "[i]f 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 shall confirm…" [emphasis added] that the agency has been duly diligent in working with the tribes to verify whether the child is an Indian child. WIC section 224.2(i)(2) indicates that "[i]f the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know that the child is an Indian child, the court may make a finding that…" [emphasis added] the federal ICWA does not apply. b. WIC section 224.2(i)(2), by its reference to the "due diligence as required in this section", appears to be referring back to WIC section 224.2(g) – a subsection that applies only when a "reason to know" has been established. Further, WIC section 224.2(i)(2) follows WIC section 224.2(i)(1), which starts with the phrase "[w]hen there is reason to know that the child is an Indian child…." Thus, without clarification, it appears that WIC section 224.2(i)(2) applies only after a "reason to know" has been established at some previous point in the proceeding.	The Forum and Committee considered this comment, but determined that the revision was not necessary because under the statutes and the rule the requirement to apply ICWA to the case only arises when there is information providing "reason to know". The Forum and Committee believe that the statute and rules are clear that the only duty that is triggered by "reason to believe" is the duty to conduct further inquiry under WIC section 224.2(e).

			c. The Rules of Court should clarify that, when there is a "reason to believe" and the Child Welfare Agency has been diligent in its further inquiry efforts, and the Court does not have sufficient evidence to find there is a "reason to know" (e.g., because the tribes have not responded or have refused to respond informally), that WIC section 224.2(i)(2) would allow the court to find that (subject to reversal/further information) that the ICWA does not apply to the proceedings. d. This clarification would be consistent with the proposed JV-405 at section 12c(2)(a), where the court is given the option to choose that the agency has complied with WIC section 224.2(e) and there is not a reason to know (and thus, ICWA does not apply). Question 2: 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? -Overall, yes, the questions about Indian status in the proposed revision are broad enough. However, it may be helpful to add an additional category under section 3 to assist with further inquiry: "One or more of my parents, grandparents, or other lineal ancestors is or was domiciled on a reservation or in an Alaska Native Village. (Include Name and relationship of ancestor(s) and name and location of reservation or Alaska Native Village)." Question 3: Do the proposed findings and orders set out in item 12c of form JV-405 and item [10] of form JV-410 correctly reflect the distinction	The Forum and Committee considered this comment, but determined that the questions on the ICWA-020 should remain closely related to the information that would give the court or agency "reason to know" as defined in the federal regulations and California statutes. Residence or domicile of an ancestor on a reservation or Alaska Native Village is not among the listed factors.

			between "reason to believe" and "reason to know," and the obligations triggered by each level of information? -Overall yes, with exception of the JV-410, item 10b(1), which, without further clarification from the Rules of Court, does not correctly distinguish the "reason to believe" and "reason to know" standards (see number (6) below). The following changes are recommended. (1) JV-405, item 12c(1). Item c(1) would be easier to understand if the words "reason to" were also added before the word "know" so the sentence reads: "The court finds that there is no reason to believe or reason to know that the child is an Indian child. ICWA does not apply…." (2) JV-405, item 12c(2). There should be separate checkboxes for subdivision (a) and subdivision (b) to clearly identify whether the agency has complied with WIC section 224.2(e) or whether the agency is now ordered to comply with WIC section 224.2(e). Therefore, it is recommended that checkboxes be added next to the (a) and (b) under this section. (3) JV-405, item 12c(3)(b). This item reads that "[n]otice has been provided as required by law". This item should clarify that notice complies with WIC section 290.1 or 290.2 to avoid confusion about whether formal noticing under WIC section 224.3 has somehow been accomplished at this stage in the proceeding. (4) JV-410, item 10a. Item 10a would be easier to understand if the words "reason to" were also added before the word "know" so the	The proposal was revised in response to this comment. The proposal has been revised in response to this comment. The proposal has been revised in response to this comment. The proposal has been revised in response to this comment. The proposal has been revised in response to this comment.

			sentence reads: "The court finds that there is no reason to believe or reason to know that the child is an Indian child. ICWA does not apply…."	
			(5) JV-410, item 10b. Item 10b uses the words "may be" instead of "is" regarding the Indian child. The word "is" should replace "may be" to be consistent with WIC section 224.2(e) ("…an Indian child is involved in the proceeding" [emphasis added]. The word "is" is also used in the proposed JV-405, item 12c(1), and these items should be consistent.	The proposal has been revised in response to this comment.
			(6) JV-410, item 10b(1). See response number (2) to Question 1 on page 2 of this document. Unless clarified in the Rules of Court, the "due diligence" standard discussed in item 10b(1), based on WIC sections 224.2(g) and 224.2(i)(2), appears to only apply when there has been a "reason to know" at some point in the proceeding. Therefore, without clarification that WIC section 224.2(i)(2)'s due diligence standard is independent of the due diligence standard referred to in WIC section 224.2(g) (which requires that there is a "reason to know"), this reference to due diligence as it relates to working with the tribes, seems misplaced in item 10b(1)'s references to "reason to believe". To this end, item 10b(1) of the JV-410 should be consistent with item 12c(2)(a) of the JV-405 (which does not refer to due diligence in working with the tribe at the "reason to believe" stage).	The proposal has been revised in response to this comment.
			Question 4: Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)?	No response required.

			-Probably not. The definition of an "Indian child custody proceeding" in WIC section 224.1(d)(1)(A) includes situations where the child is removed from the home of a parent and placed in the "home of a guardian". This language is consistent with 25 USC section 1912 and 25 USC section 1903(1)(i) (definition of "foster care placement"). Technically, in an upfront guardianship under WIC section 360(a) the child is never legally removed from the parent under WIC section 361 (and it is more akin to a voluntary placement). However, this technicality does not appear to be consistent with the spirit of the ICWA since the hearing that will result in an upfront guardianship likely began, and was likely first scheduled, as an involuntary child custody proceeding (a disposition hearing where the agency recommended removal and placement in foster care). In essence, the term "removal" under the ICWA does not necessarily mirror the legal removal requirement under California law; and, ultimately, a tribe(s)' rights (nor the parents' or child's rights) should not be hindered since the proceeding very likely was initiated as an involuntary child custody proceeding. To that end, this waiver process also would not be consistent with the definition of a "voluntary proceeding" under WIC section 224.1(q) or the requirements of WIC section 16507.4 Question 5: 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 form has been modified to use the word gender instead of sex.

			-The modification to remove the word “sex” and replace it with the word “gender” seems most instructive to court participants.	
12.	Marin County Counsel’s Office Deidre K. Smith, Deputy County Counsel	A	I wholeheartedly agree with the proposed ICWA 020 form. The proposed form appropriately narrows the inquiry to align with the statutory definition of "reason to know." Having conducted hundreds of these inquiries, I can confidently state that parents know when they and their child are members or citizens of an Indian tribe. There is no confusion about this. The previous practice, which required the court to ask parents about "Indian ancestry" was far too vague, and had nothing to do with a parent or child's actual citizenship/membership in a tribe (the crux of ICWA). Moreover, with genetic ancestry testing widely available online, many people can now attest that they have "Indian ancestry," resulting in more confusion in court. The prior overly-broad inquiry wasted time, resources, and resulted in the needless mailing of thousands of notices containing highly confidential ICWA 030 information (petitions, birth certificates, dates of birth and death, addresses, mother's maiden names) to thousands of tribes. ICWA is a political, not a race-based, statute and the proposed ICWA 020 reflects this. Please adopt the new ICWA 020 in order to tailor the court's inquiry toward the proper statutory factors. Thank you for all of your work on this issue.	No response required.
13.	Superior Court of San Bernardino County By: Executive Office Court Executive Office	A	Does the proposal appropriately address the states purpose? o Yes Are the questions about Indian Status in the proposed revision to form ICWA-020, Parental	No response required. No response required.

			Notification of Indian Status Form, broad enough to ensure that Indian children are identified? o Yes Would the proposal provide cost savings? If so, please quantify. o 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? o Minimal training would be required, less than 1 hour - Court Investigators, Judicial Assistants, Legal Processing Assistants, Probate Examiners, and supervisors. Procedures would need to be updated as well as the addition or modification of minute codes. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? o Yes	No response required. No response required. No response required.
14.	San Diego Office of County Counsel, Juvenile Dependency Division By: Evangelina Woo Senior Deputy County Counsel	A	Rules of Court 5.481(b): if we have "reason to know" do you still recommend conducting investigation/due diligence before the court orders notice? Courts in my county are ordering notice based on the mere hint of ancestry (which is a separate problem) but I'm wondering if attorneys should be asking the court to hold off on the making the order for notice until we can try to narrow down which tribes to notice?	The Forum and Committee cannot give practice advice, but note that an agency's duty to do further inquiry under section 224.2 (e) arises when a social worker has "reason to believe" that a child may be an Indian child. The duty to send notice arises under 224.2 (f) whenever there is "reason to know" as defined by 224.2 (d) and the duty to use due diligence to identify and work with tribes under 224.2 (g) arises when there is "reason to know". None of these suggest the agency's obligations depend on an order from the court. Section 224.2

				(g) clearly anticipates that the agency has an obligation to conduct due diligence prior to a court hearing and prior to any findings by the court about ICWA status.
			5.482(a): should the clause "except as provided in section (a)(2) and (3)" be deleted, since subdivisions (2) and (3) are proposed to be stricken?	In response to this and other comments the proposal has been revised to reinstate subdivisions (a)(2) and (3).
			Also: how that there is no more 60-day rule, how do you propose we proceed? We're still setting out ICWA specials to ensure follow up is done with the tribes we noticed so they can make a determination regarding membership/eligibility but are there any proposed guidelines? Particularly since the mandate is to "treat the child like an Indian child" when there's reason to know until we hear otherwise: what constitutes a reasonable amount of time to wait? What about those situations where we make attempts and can't get a response?	The Forum and Committee cannot give practice advice, but note that there is nothing in ICWA, the federal regulations or state law that mandates a tribal response or puts a time limit on a tribe's ability to make a determination of a child's status, respond to a notice, or intervene in a case. A court or agency's duty to apply ICWA depends upon the totality of the evidence concerning Indian status. Section 224.2(i)(2) authorizes the court to make a finding at any time that ICWA does not apply after review of evidence of further inquiry and due diligence based on an evaluation of the totality of the evidence before the court and whether there is or continues to be evidence supporting a "reason to know".
			5.483(d)(2) (A): can the remainder of 305.5(e)(2)(B) be added to this subdivision? (D): could this be amended to match the language in 305.5(e)(2)(E)?	The proposal was revised in response to this comment to track the language in WIC 305.5(e)(2).
			(e)(2): The amended WIC code allows the good cause to be stated on the record, as an alternative to being written	The proposal was revised in response to this comment by revising rule 5.483 (e).
			5.484 (b): is there a process for notifying counsel when a party requests the Indian child be returned? Is	The Forum and Committee conclude that it is not appropriate to establish an evidentiary standard by rule of court. In terms of notice of ex parte

			the evidentiary standard a preponderance of the evidence? And will any party opposing the return have an opportunity to respond, or is it a true ex parte?	applications, the proposal has been revised to reference rule 3.10 of the rules of court, the general civil rules governing ex parte applications found in Chapter 4 of Title 3 of the rules of court apply.
			5.4845 (b)(2): to me, the phrase "the court must analyze the availability of placements within the placement preferences in descending order" is clear without the added phrase "without skipping."	The Forum and Committee have considered the comment, but feel that the language "without skipping" adds clarity consistent with the federal Guidelines for Implementing the Indian Child Welfare Act[1] issued by the U.S. Department of the Interior Office of the Assistant Secretary – Indian Affairs Bureau of Indian Affairs in December 2016. Implementing 25 CFR §23.130 at page 56 of the guidelines it specifically states that preferences should be considered without being skipped.
			(b)(2)(D): can the child's extraordinary mental needs be added as something to consider here, as it is in the statute?	The proposal was revised in response to this comment to add "mental" consistent with WIC 361.31 (h)(4).
			5.674(b)(2)(C): this should be "active efforts" when it is known or reason to know that the child is an Indian child, right?	The proposal was revised in response to this comment to reference "active efforts" when it is known or there is reason to know the child is an Indian child.
			Forms ICWA 005 INFO #2(c) – considering adding "or on a reservation" to the phrase "Indian country"?	The proposal was revised in response to this comment to add a more expansive definition.
			ICWA 020 #3(g) could you also add a space for the parent/guardian/Indian custodian to write down the membership/citizenship number in this area?	The proposal was revised in response to this comment to add a space for this information.
			ICWA 030	

[1] Available at: https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf

			General question: what do you want Agencies to do when a paternity finding is still pending, but the alleged father claims ancestry and provides contact for relatives/lineal ancestors? Do we include that information in item #6d? Or wait and file an amended 030 once a paternity finding is made? The 030 is also framed in terms of the child's biological father, but dependency also recognizes presumed fathers as well, and the advice we've been giving to our client is to put the presumed father on the 030 if he claims heritage, even if we're not 100% sure he is the biological father.	The Forum and Committee cannot give practice advice.
			#5(g)(h) – item (g) is for the mother's grandparents (the minor's maternal great-grandparents) and the father's grandparents (the minor's paternal great-grandparents) but item (h) is for two more sets of the father's grandparents (the minor's paternal great-grandparents again). Is that supposed to be one item for maternal great-grandparents and one for paternal great-grandparents?	The proposal was revised in response to this comment.
			Can we get a definition of a "lineal ancestor"? My client often asks what to do if relatives by marriage claim ancestry, and it would be really helpful if we could clarify that term either on the info sheet or in the 030 itself.	The proposal was revised in response to this comment to reference a biological connection.
			Lastly, regarding "lineal ancestors" could you include a box in #5(i) for the client to check if there are more than 2 lineal ancestors and attach a separate page?	The proposal was revised in response to this comment to add reference to additional individuals if necessary.
			ICWA 060 My understanding is that when a child is a member of a tribe that has exclusive jurisdiction	Section 25 U.S.C. 1911(a) does not specify what procedure should be followed when a state court determines that a tribe has exclusive jurisdiction over a child that has been brought before the state

			under 25 U.S.C. 1911(a), the court must transfer the case and then dismiss the juvenile case once transfer has been effectuated. If so, perhaps some of the language in #5 can be added or amended to state that the case shall be transferred and dependency petition dismissed upon confirmation of receipt, as opposed to "jurisdiction has been terminated?" I'm not sure if it's just a distinction without a difference, but 305.5(c) specifically uses the word "dismissed" and not "terminated."	court in "child custody proceeding" governed by ICWA. Prior California law (prior WIC 305.5(a)) specified that such cases should be transferred to the tribal court. The federal regulations published in 2016 clarified that, subject to any agreement between the state and tribe under 25 U.S.C. §1919, the proper procedure was for the state court to expeditiously notify the tribe and dismiss the case based on the tribe's exclusive jurisdiction (see 25 C.F.R. §23.110).
			ICWA 070-090 Is there a procedure in place to notice the parties? Who provides the notice? The party moving to return the child? Or the court, once it sets a hearing?	Ex parte applications in juvenile cases are governed by Chapter 4, Title 3 of the rules of court.
			JV 320 Is it possible to add findings regarding when the court no longer has "reason to know" or "reason to believe" based on the inquiry?	The Forum and Committee considered this request but concluded it was not appropriate to include in this form.
			JV 405(c)(3)(C) I understand the mandate to "treat the child like an Indian child" until a determination has been made that we no longer have reason to know, but what do you suggest in terms of finding a QEW or a tribally approved home where there is no identified tribe yet and/or where ICWA doesn't apply yet and a tribally approved home is not RFA approved? I am not aware of any authority allowing the Agency to place a child in a tribally approved, but non-RFA/ERFA approved home unless ICWA applies.	The Forum and Committee cannot give practice advice in a comment chart.
			JV 410(15)(g)(6)-(7)	The proposal was revised in response to this comment.

			These options appear to be covered under 16(d), which is precipitated by the finding that the child is an Indian child or that there is reason to know. Is there any reason the 361.31 placement preferences need to be in the section that doesn't seem to pertain to children who are Indian, or for whom we have reason to know are Indian? JV 412 (5) The tribe has the right to intervene "if the child is a member of a federally recognized tribe or is eligible for membership and the biological child of a member of a federal y recognized tribe" right? Is it possible to add that into the language?	The Forum and Committee declined to follow this recommendation.
15.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	* See complete text of comments in appendix A 1. Does the proposal appropriately address the stated purpose? Yes. 2. Are the questions about Indian status in the proposed revision to form ICWA-020 broad enough to ensure that Indian children are identified? The committee might wish to consider adding "federal trust land, rancheria, allotment" to items 3d and 3e, which inquire about residence or domicile on a reservation or in Alaska Native Village. (See form ICWA-030, p. 7.) 3. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 [Is "item 10" is intended?] 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? Yes, but as noted below, on form JV-405, checkboxes are needed for the text in	No response required. The Forum and Committee considered this comment, and did make some revisions to the language in response to this and other comments by adding the phrase "…any tribal trust lands." Throughout the country, "Indian country" is referred to by different names: reservation, rancheria, pueblo, etc. The Forum and Committee did not want to appear to set out a comprehensive list of names and instead chose to include all tribal trust land. The proposal was revised in response to this and other similar comments.

			items 12c(2)(a) and 12c(2)(b) so that the court can indicate which statement applies. 4. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? Good question. Is it clear whether the tribe's authorized representative has the legal authority to waive the tribe's rights under ICWA? More generally speaking, are ICWA rights waiveable at all? These questions must be answered. 5. 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? It should ask about gender (because this is important information for the court) with a note that "nonbinary" can be entered. 6. Would the proposal provide cost savings? Unknown. 7. What would the implementation requirements be for courts? Informing bench officers, court staff, county agencies, probation departments, and attorneys of changes. Making changes as appropriate to information provided to the public on each court's website. 8. Would three months provide sufficient time for implementation? Unknown. This proposal contains a large number of revisions. 9. How well would this proposal work in courts of different sizes? Unknown. Comments page 2 – Rule 5.481(b)(1)	No response required. The form was revised to reference "gender". No response required. No response required. Bench guides and job aids will be prepared. No response required. No response required.

			Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (F). Comments page 3 – Rule 5.483(d)(2) Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (E) The comment recommended changing the word biological (ie. biological father) to genetic throughout the proposal to conform to AB 2684 which amends the Uniform Parentage Act.	The Forum and Committee have considered this comment and acknowledge the general preference not to needlessly repeat statutory language in the rules. However, because the ICWA rules cover case types generally governed by the Family and Probate codes as well as those governed by the Welf. & Inst. Code, the Forum and Committee determined that there was value in repeating the statutory language from the federal regulations and Welf. & Institutions Code here in the rules. See response above. The Forum and Committee declined to follow this recommendation. Although AB 2684 did add the term “genetic parent” to some sections of the Uniform Parentage Age and replace the term biological father with genetic father or genetic parent in several places, the terms biological and biological father are still used throughout the Family Code including in the provisions recently revised by the Family Law Omnibus, AB 1817.
16.	Shettigar, Prabhath Deputy County Counsel, Office of the Riverside County Counsel	NI	Section 224.2(e) "reason to believe" is undefined in the statutes. Please provide definition. Also, please reorder the statute so that "reason to believe" comes after section 224.2(c), assuming the intent of the statute is to make further inquiry if the court does not have sufficient information to make a determination one way or the other and needs more information to do so.	The Judicial Council cannot, through rules of court, create a definition that was not provided in the statute. Nor can a rule of court reorder or reword the statute.

17.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	A	The proposal is required to conform to a change of law. The JRS notes the following impact to court operations: • Impact on local or statewide justice partners. Page 20 of 21 Local justice partners will be required to use updated and modified forms to address compliance with ICWA. These forms are regularly updated over the years in response to changes in the law. These updates are no different. The cost impact is minimal and not significant. Ultimately, the forms are a cost saver to the justice partners and the Court. Compliance with ICWA is a major appellate issue and non-compliance results in delayed permanency for children and prolonged litigation. The forms are intended and should make it easier for the parties and the Court to comply with ICWA. **Requests for Specific Comments, SPR19-42** Q. Does the proposal appropriately address the stated purpose? Answer: Yes. The changes and modifications to the Rules of Court and the Judicial Council forms are necessary because of changes in federal and state law. Q. 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? Answer: Yes. Q. 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	No response required.

			to know," and the obligations triggered by each level of information? Answer: Yes. Q. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? Answer: Yes and No. Yes, all parties may waive their statutory rights if the waiver is knowing, intelligent and voluntary. ICWA, however, serves the purposes of not just the parties but also the Native American tribal communities. Thus, the Child Welfare Agency has a non-delegable and non-waivable duty to provide notice and to make active efforts if required, which the Tribe may deem satisfied by an express waiver. Q. 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? Answer: The question should be directed at "gender" and not the sex of the child so that the Court can properly address the child in Court which is required by law. The child's biological sex is not as relevant to the Court as the child's gender under the law. Q. Would the proposal provide cost savings? If so, please quantify. Answer: The more the Judicial Council forms bring clarity to Findings and Orders of the Court, the greater the cost savings to the Branch in reduced appeals. This is true when updating the forms on ICWA issues and gender identity issues. 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? Answer: No cost to the Court. These are standard forms and are being updated in regular course. Q. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Answer: Yes. Q. How well would this proposal work in courts of different sizes?	

Comments From the Agua Caliente Band

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:

Commented [J1]: Conservatorships are for adults and therefore would not meet the definition of "child custody proceeding" in ICWA. It's true that ICWA can now apply pursuant to state law to an Indian child who is a non-minor dependent, but in a guardianship case arising under the WIC, the case would remain a guardianship; it would not become a probate conservatorship.

* * *

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, and 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~~or 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:~~

Commented [J2]: The specific details on how to contact a tribe, as outlined in 25 CFR section 233.105 should be set out here to improve inquiry and notice compliance. This is one of the questions we most often get at Tribal STAR trainings from social workers.

~~(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: ~~22~~

(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) Information that a child has Native American ancestry does not in and of itself provide reason to know the child is an Indian child. There must be some information suggesting that the child is an Indian child (i.e., a child who is a member of a federally-recognized Tribe or a child who is eligible for membership in a federally-recognized Tribe and has a parent who is a member of such a Tribe).

(~~2~~3) 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 the child is an Indian child, find that the Indian Child Welfare Act does apply, and order compliance with the requirements of the Act, including notice in accordance with (c) below.

(C) Find that ~~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 there is no reason to know the child is ~~not~~ an Indian child and that the Indian Child Welfare Act does not apply. ~~27~~

(4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

(c) Notice

Commented [J3]: The word "tribe" should be capitalized throughout the rules, as it is in 26 CFR Part 23.

Formatted: No underline

Formatted: Indent: Left: 0.44", No bullets or numbering

Formatted: Right: 0.02", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 23 + Alignment: Left + Aligned at: -0.79" + Indent at: 0.44", Tab stops: 1.31", Left + Not at 2.05" + 2.05"

(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~~224.3, Family Law Code section 180, and Probate Code section 1460.2 for all ~~hearings~~ proceedings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement and every subsequent hearing. ~~41~~

(2)–(4) * * *

Commented [J4]: As drafted, the rule suggests that notice is only required for certain hearings, such as detention, disposition and the 366.26 hearing. It is required for every hearing held in an Indian child custody proceeding. The rule should make it clear that once notice is triggered, notice must be provided for all hearings in the proceeding.

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.~~

Commented [J5]: Why are (a)(2) and (3) referenced as exceptions to the 10-day rule but shown as deleted below? Language consistent with WIC 224.3(d) provisions regarding exception to 10-day rule and continuances should be reflected in (a)(2) and (3).

(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)**~~ *** * ***

(f) Consultation with Tribe

[Add to existing language the specific examples of "active efforts" set out in 25 CFR section 23.2 that involve consultation with Tribe, e.g., (1), (2), (3), (4), (5), (8), (10)]

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 already a ward of ~~the~~ a tribal court or is domiciled or resides within a reservation of an Indian

Commented [J6]: It would be helpful to clarify whether a "ward" is a child who is the subject of any tribal court custody orders or only custody orders vesting custody with the tribe for protective reasons.

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 pursuant to Welfare and Institutions Code section 319~~.~~ if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the locl agency to the tribe.~~19~~

(b) ~~**(c)**~~ *** * ***

(c) [Add to end of existing text:] Upon receipt of a transfer petition, the court must ensure that the Tribal court is promptly notified in writing of the transfer petition. The notificiation may request a timely response regarding whether the Tribal court wishes to decline the transfer.

Commented [J7]: This reflects the requirements of 25 CFR section 23.116.

(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 or, if the child's

tribe does not have a tribal court, the child's tribe declines the transfer.~~40~~

(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~~ the perceived adequacy of tribal or BIA social services or judicial systems.

Formatted: Indent: Left: 0.44", No bullets or numbering

(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, and .~~29~~

~~30 Whenever it is known or there is reason to know that the case involves an Indian~~
~~31~~28 ~~child,~~ the petition requesting emergency removal or continued emergency
30 placement of the child or its accompanying documents must contain the following:
~~32~~31 ~~33~~

(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, Indian custodians, and tribe about the emergency proceeding;

Formatted: Indent: First line: 0", Right: 0.02", Space Before: 1.2 pt, Line spacing: Multiple 1.09 li, Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 25 + Alignment: Left + Aligned at: -0.37" + Indent at: 0.44"

(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(s) ~~or parents~~ or ~~of~~ Indian custodian(s). ~~40~~

(c) Time limitation on emergency proceedings

Formatted: Indent: First line: 0", Right: 0.02", Line spacing: Multiple 1.09 li

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, if applicable; and ~~9~~

(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,~~

~~w~~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, unless the court finds good cause to deviate from those placement preferences. ~~26~~

(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

Formatted: Indent: First line: 0", Right: 0.02", Tab stops: 7.69", Left

Formatted: Indent: Left: 0.44", First line: 0", Tab stops: 1.26", Left + 1.26", Left + Not at 1.66" + 1.66"

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 5.48~~5~~6. Removal; Termination of parental rights

(a) ~~* * *~~Evidentiary Burdens

(1) Where the court knows or has reason to know an Indian child is involved, the court may not order removal of the child from the physical custody of a parent or Indian custodian pursuant to Welfare and Institutions Code section 361, Family Code section 3041, or the Probate Code, or order continued removal under Welfare and Institutions Code sections 366.21(e)(1), (f)(1), 366.22(a)(1) or 366.25(a)(1), unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

[Make existing text a new paragraph (2) and subparagraphs (A) and (B).]

(3) For removal, continued removal, or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood the continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the proceeding.

(4) Without a causal relationship identifie in (3), evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

(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 tribal customary adoption without termination of parental rights, guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.48~~6~~7. Petition to invalidate orders

(a)–(c) * * *

Rule 5.48~~7~~8. Adoption record keeping

(a)–(b) * * *

Rule 5.531. Appearanc by telephone

(d) Nothwithstanding (c), if it possesses the capability, the court should allow alternative methods of participation in child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

Commented [J8]: This reflect 25 CFR section 23.133.

Commented [J9]:

(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).

(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, Indian custodians, and tribe about the hearing pursuant to ~~this section~~the Welfare and Institutions Code section 224.3;

~~3~~

(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;

~~20~~ (8) If the child is believed to be a ward of a tribal court or 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.

Formatted: Indent: Left: 0.44", Hanging: 1.22"

Formatted: Space Before: 0 pt, Line spacing: Exactly 13.7 pt, Tab stops: 1.26", Left + 1.26", Left

Commented [J10]: Sometimes this is plural and sometimes singular. It should be consistent, one way or the other.

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 and were successful;

(B) Active efforts have been made and were not successful; or ~~8~~

(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.

Commented [J11]: This rule should address what the court must do if it finds that the active efforts requirement has not been met, i.e., order the child returned and that active efforts be made.

Formatted: Indent: Left: 0.53", Hanging: 1.1"

(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

Commented [J12]: WIC does not permit detention hearings to be continued for 30 days. 25 CFR section 23.113(e) is inconsistent with state law in this regard. This subsection of the rule should be deleted.

Commented [J13]: An Indian child custody proceeding is initiated by the filing of the 300 petition (or other petition in probate or family court). There is never a scenario in which a 300 petition could not be filed within 30 days.

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)(i)(3) and rules

5 eree.
3
8 4 **(f)–(h) * * *** ,

5 . 5 4 0 , a n d 5 . 5 4 2 w i t h r e g a r d t o o r d e r s b y a r e f

Comments from the Children's Law Center

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party ~~seeking~~ requesting 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, pre-adoptive placement, 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. This imposes a duty on the court, court-connected investigators, county welfare departments, probation departments, licensed adoption agencies, adoption service providers, investigators, petitioners, appointed guardian or conservators of the person, and appointed fiduciaries. ~~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, pre-adoptive placement, 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, pre-adoption, 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) Order the parent, Indian custodian, guardian or any other relative present in court to complete the *Parental Notification of Indian Status* Form (ICWA-020). ~~oO~~rder 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. Any information obtained by the petitioner must be documented in the ICWA-020 form. If the petitioner had previously sent notices and the information obtained is new information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020 then the petitioner must complete a new ICWA-020 with all the information and re-notice all the identified Tribes.

~~(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 a child involved in a proceeding is an Indian child if: ~~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.

Commented [JM1]: It is important to ensure this language is included because it is the most common ground in which ICWA reversals come down from the COA.

(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 any information required by section 224.3 that was not previously available or included in the notice issued under Section 224.3, the court must order the party seeking placement shall provide the additional information to any tribes entitled to notice under section 224.3 and to the Secretary of the Interior's designated agent and the court must reconsider the previous ICWA 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, or 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~~3, 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, pre-adoptive placement, or adoptive placement.

(2)–(4) * * *

Rule 5.482. Proceedings after notice

(a) Timing of proceedings

(1) At a court hearing that may result in a foster care placement, termination of parental rights of one or both parents, pre-adoptive placement, or adoptive placement, the court may not proceed with the hearing until at least 10 days after the parent, Indian custodian, the Tribe, or the Bureau of Indian Affairs have received notice of the proceedings except in a hearing held pursuant to section 319 of the Welfare and Institutions Code. ~~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, pre-adoptive 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) With the exception of the hearing held pursuant to Section 319 of the Welfare and Institutions Code, the parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days to prepare for that hearing or proceeding.

(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~~

Commented [MJ2]: The changes the JC made would strike through an important provision regarding the detention hearing. Their language keeps in section (1) a reference to (a)(2)&(3) but they delete it from the language. I put it together in one paragraph which includes all the language.

~~(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

Proof of compliance with the notice provisions must be filed with the court in advance of the hearing except for a hearing held pursuant to Section 319 of the Welfare and Institutions Code and must include:

(1) Notice of Child Custody Proceedings for Indian Child (form ICWA-030),

(2) Copies of the notices sent to all parties, tribes, parents, and Indian Custodians, and

(3) All return receipts and responses received to the notices.

(c) Determination the ICWA Is Not Applicable ~~When there is no information or response from a tribe~~

(1) If the court makes a finding that proper and adequate inquiry and due diligence were conducted pursuant to section 224.2 and 224.3 of the Welfare and Institutions Code and the court determines there is no reason to know the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) does not apply to the proceedings. ~~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) The determination of the court that the Indian Child Welfare Act of 1978 does not apply in subsection (c)(1) is subject to reversal based on sufficiency of the evidence. The court shall reverse it's determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3 of the Welfare and Institutions Code. ~~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

Commented [MJ3]: This language makes it in compliance with the WIC section 224.3 and the previous rule of court.

Commented [MJ4]: I do not think they can take out this section without guidance as to what to do when you have done everything and there is no response because it is a common situation. Since tribes get over 20,000 inquires a day sometimes they are not always timely to respond to inquiries and it would delay proceedings without some direction.

The Indian child's tribe and Indian custodian have an absolute right to intervene in the proceedings. The tribe or Indian custodian may intervene, orally or in writing, at any point in the proceedings. ~~and~~ The tribe, at it's own discretion 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.

Commented [MJ5]: I think it is good to clearly state this since some court are confused if they have the absolute right to intervention

(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) At any stage of the proceeding as defined under Section 224.1 of the Welfare and Institutions Code, if ~~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 a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 of the Welfare and Institutions Code if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe. ~~an emergency removal.~~

(b) The state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, or the child's tribe, unless the state court finds good cause under subdivision (d) not to transfer the proceedings.

(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~~

(B~~C~~) 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 shall ~~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, be15 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, child custody, pre-adoptive placement, adoptive placement. 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. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer;

(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) Whether or not the Indian child~~'s~~ has cultural connections with the tribe or its reservation; or

(E) Socioeconomic conditions or any ~~negative~~ perception of inadequacy of the tribal services or BIA social services or judicial systems of the tribe.

(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

Commented [MJ6]: I made a lot of changes to this section to reflect the actual code section language and ensure that it matches with the federal as well as state codes.

(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.

Before taking a child into custody, a social worker shall consider whether the child may remain safely in his or her residence. The consideration of whether the child may remain safely at home shall include, but not be limited to, the following factors:

(1) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the child would eliminate the need to remove the child from the custody of his or her parent, guardian, Indian custodian, or other caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the child. If those services are available, they shall be utilized.

(3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

(4) If it is known or there is reason to know the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

(b) Agency Report Shall Contain

The social worker shall report to the court on the reasons why the child has been removed from the parent's, guardian's, or Indian custodian's, physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents, guardians, or Indian custodian, and whether there are any relatives who are able and willing to take temporary physical custody of the child. If it is known or there is reason to know the child is an Indian child, the report shall also include all of the following:

(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.
(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.

~~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.~~

(c~~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 the child has been ordered detained pursuant to Section 319 of the Welfare and Institutions Code ~~there has been an emergency removal of the child from parental custody~~, any party may request an ex parte hearing prior to disposition to present evidence to the court that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child by ~~who asserts that there is new information indicating that the emergency situation has ended may request an ex parte hearing by~~ filing a Request for Ex Parte Hearing to Return Physical Custody of an Indian Child ~~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 o~~f~~r Indian custodian.

(d~~e~~) 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 5.484~~5~~. Placement of an Indian child

(a) * * *

(b) Standards and preferences in placement of an Indian child

(1) Whenever it is known, or the court has reason to know that a child is an Indian child in a proceeding listed under rule 5.480, the child's placement shall be in compliance with the specified placement preference in Welfare and Institutions Code section 361.31, Family Code section 1777(a), and Probate Code section 1459(b) unless the court finds good cause to deviate from the placement preference by clear and convincing evidence. ~~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.~~

Commented [MJ7]: It is very important to put in the language of clear and convincing evidence standard as this was in dispute prior to the codification in the code

(2) The court must analyze the availability of placements within the placement preferences in descending order without skipping. The Indian child shall be in the least restrictive setting that most approximates a family situation and in which the child's special needs, if any, may be met.

(3) The court may deviate from the placement preference order only if the court finds by clear and convincing evidence there is 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.

(4~~3~~) The placement preferences shall be analyzed and considered each time there is a change in the child's placement.

(5~~4~~) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the placement preference order not be followed. A placement ~~may~~ shall not depart from the placement preferences based on the socioeconomic status of any placement relative to another. A placement shall not depart from the placement preferences 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.

(6) If the court knows or has reason to know that the child is an Indian child and the court finds at the hearing held pursuant to section 319 of the Welfare and Institutions Code that there is good cause to deviate from the placement preferences set forth in Section 361.31 of the Welfare and Institutions Code, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

Commented [MJ8]: I think this is a very important part that was left out because it discusses their ongoing duty to find a compliant placement (WIC sec. 319(h)(1)(C).)

~~(45) (67)~~ (7)-(9)* * *

(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. In considering if active efforts were taken the court shall consider if the agency utilized the available resources of the Indian child's extended family, tribe, tribal or other Indian social service agencies, and individual Indian caregiver service providers. Active efforts shall include the pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe.

Commented [JM9]: I think it is important to have this language here so it ties in with the active efforts requirement.

(~~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~~. The court shall not order a foster care

placement or guardianship in a proceeding described in rule 5.480 absent a determination by clear and convincing evidence including the testimony of a qualified expert witness as defined by Section 224.6 of the Welfare and Institutions Code, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Commented [JM10]: This is a very important provision which was not part of the active efforts provision so I added

Rule 5.48~~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 5.48~~6~~7. Petition to invalidate orders
(a)–(c) * * *

Rule 5.48~~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)–(~~i~~g) * * *

(h) Conduct of hearing (§388)

(1) The petitioner requesting the modification under section 388 has the burden of proof.

(A) If the request is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist.

(B) If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided. In the case involving an Indian child, the petitioner must show 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.

(C)-(E) ***

(2) ***

(i)-(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) At the first appearance in court of each party, 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). Newly obtained information which was not previously provided in the ICWA-020 or inaccurate information was previously provided in the ICWA-020, then the court shall order the petitioner to complete a new ICWA -020 with all the information and re-notice all the identified Tribes.

(3) When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence as described in rule 5.481 and determines that the Indian Child Welfare Act does not apply as described in subsection (b)(3)(A) of rule 5.481. ~~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~~) Health and education information (§16010) * * *

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, the court must make the heightened findings under the Indian Child Welfare Act in order to remove the child from the custody of the parent, or Indian custodian 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.

Commented [JM11]: Again important to include because #1 reason for reversal from COA in published ICWA cases is not providing tribes with all the updated information or correcting misinformation.

(c)–(e) * * * add Indian custodian to each section

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, in addition to the requirement in section (a) the court ~~the child~~ may not ~~be ordered detained~~ order an Indian child to be 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, in addition to the requirements under section (c) 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. If ~~where~~ it is known or there is reason to know the child is an Indian child, the court shall determine if the county agency made active efforts to provide remedial services and rehabilitation programs 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 by clear and convincing evidence good cause exists not to follow the placement preferences pursuant to rule 5.485.

(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) * * *

Item SPR19-42 Response Form

Title: Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children

☐ **Agree** with proposed changes

☒ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments:

1. Does the proposal appropriately address the stated purpose? Yes.

2. Are the questions about Indian status in the proposed revision to form ICWA-020 broad enough to ensure that Indian children are identified? The committee might wish to consider adding "federal trust land, rancheria, allotment" to items 3d and 3e, which inquire about residence or domicile on a reservation or in Alaska Native Village. (See form ICWA-030, p. 7.)

3. Do the proposed findings and orders set out in item 12c of form JV-405 and item 9 [Is "item 10" is intended?] 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? Yes, but as noted below, on form JV-405, checkboxes are needed for the text in items 12c(2)(a) and 12c(2)(b) so that the court can indicate which statement applies.

4. Can the rights and protections under the Indian Child Welfare Act be waived through the use of forms JV-419 and JV-419(A)? Good question. Is it clear whether the tribe's authorized representative has the legal authority to waive the tribe's rights under ICWA? More generally speaking, are ICWA rights waiveable at all? These questions must be answered.

5. 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? It should ask about gender (because this is important information for the court) with a note that "nonbinary" can be entered.

6. Would the proposal provide cost savings? Unknown.

7. What would the implementation requirements be for courts? Informing bench officers, court staff, county agencies, probation departments, and attorneys of changes. Making changes as appropriate to information provided to the public on each court's website.

8. Would three months provide sufficient time for implementation? Unknown. This proposal contains a large number of revisions.

9. How well would this proposal work in courts of different sizes? Unknown.

Rule 5.480

Paragraph 1: Insert semicolon after "preadoptive placement."

Rule 5.481

Subd. (a)(1): Delete comma before "and there is no new information."

… unless the party is filing a subsequent petition~~,~~ and there is no new information.

Subd. (a)(2): Insert comma before "proceeding to declare a child free of the custody and control…"

Subd. (a)(4)(A): Replace "sections 1901 and 1903(2)" with "section 1903" because there are no definitions in section 1901; the definitions are in § 1903(2), (6), and (9). Change "224.2" to "224.3." Delete spaces in statutory citations.

… as defined in 25 United States Code section~~s 1901 and~~ 1903~~(2)~~, to gather the information listed in Welfare and Institutions Code section 224.~~2~~3(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)~~;

Subd. (a)(4)(C): Change "any other person that" to "any other person who." Delete space in statutory citation, "224.2(e)(3).

Subd. (b)(1): Suggested change to match language in WIC § 224.2(d). Also, the court is not the only entity who might have "reason to know" triggering ICWA provisions (e.g., the social worker or probation officer can have reason to know as well.)

~~The court has~~ There is reason to know the child is an Indian child if:

Comment: Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (F) –

~~The court has~~ There is reason to know the child is an Indian child if any of the circumstances listed in Welfare and Institutions Code section 224.2(d) exist:

Subd. (b)(3)(A): Delete "Notwithstanding this determination," as unnecessary.

Subd. (c)(1): Change "224.2" to "224.3" and make other suggested changes –

… "to the parent, ~~or~~ legal guardian, or ~~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~~3, Family ~~Law~~ Code section 180, and Probate Code section 1460.2

Subds. (c)(2)-(3): Change citations ==

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section ~~727.4(a)(2)~~ 224.3 in any case described by rule 5.480(2)(A)-(C).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in ~~(a)(5)~~(b).

Rule 5.482

Subd. (a): Delete "(1)" (because (a)(2) and (3) are being deleted) and delete ", except as stated in sections (a)(2) and (3)" because those sections are being deleted).

~~(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)~~.

Subd. (d): Reletter as "(c)" because previous (c) was deleted. Change "their" to "its" in second sentence.

~~(d)~~(c) Intervention

The Indian child's tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings. The tribe may, but is not required to, file with the court the … (form ICWA-040) to give notice of ~~their~~ its intent to intervene.

Subd. (f): Change "5.484" to "5.48**5**" because that rule is being renumbered.

Rule 5.483

Subd. (d)(2): Comment: Previous proposals to amend the California Rules of Court have deleted language that mirrors the applicable statutory text and replaced it with a reference to the statute. Consideration might be given to the following change to subd (b)(1) and the deletion of subparagraphs (A) through (E) –

In assessing whether good cause to deny the transfer exists, the court must not consider any of the factors listed in Welfare and Institutions Code section 305.5(e)(2).

Comment: If paragraphs (A)-(E) remain in subd. (d)(2), wouldn't it make more sense to match the order of the factors as they are listed in WIC § 305.5(e)(2)? That is, change (A) to (B), (B) to (C), (C) to (D), (D) to (E), and (E) to (A).

Subd. (d)(2)(A): Suggest changing "foster care or termination-of-parental-rights proceeding" to "child custody proceeding" for two reasons:

[1] to match statutory text (see WIC § 305.5(e)(2)(B), and
[2] to ensure that this rule also applies to preadoptive placements and adoptive placements (see WIC § 224.1(d)(1).)

Whether the ~~foster care or termination of parental rights~~ child custody 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;

Subd. (d)(2)(D): If the suggestion above regarding (d)(2) is not adopted, insert "Whether" to match statutory text. (See WIC § 305.5(e)(2)(E).)

~~Whether T~~the Indian child's cultural connections with the tribe or its reservation; or

Advisory Committee Comment: Due to the relettering of subds. (f) through (i), the first and third paragraphs need to be changed as follows:

Once a transfer to tribal court is finalized as provided in rule 5.483(~~i~~h), the appellate court lacks jurisdiction to order the case returned to state court (In re M.M. (2007) 154 Cal.App.4th 897).

Subsection (~~h~~g) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.484

Subd. (b): Insert name of form and change semicolon to period. Change "of" to "or."

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~~ on *Request for Ex Parte Hearing to Return Physical Custody of an Indian Child* (form ICWA-070) to determine whether the emergency situation has ended~~;~~.

… the court shall order the child returned to the physical custody of the parent or parents ~~of~~ or Indian custodian.

Rule 5.485

Subd. (b)(2)(D): Insert “mental” and comma after “child” to match WIC § 361.31(j)(4).

The extraordinary physical, mental, or emotional needs of the Indian child, including specialized treatment services that may be unavailable in the community …

Subd. (b)(2)(E): Suggested changes to match WIC § 361.31(j)(5) –

The unavailability of a suitable ~~families~~ placement ~~within the placement preferences based on a documented~~ after a determination by the court that a diligent ~~effort to identify families meeting the preference criteria~~ search was conducted. The standard for determining …

Subd. (b)(7): Suggested change –

(~~6~~7) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in ~~rule 5.481(a)(4)(A)~~ 25 United States Code section 1903(2), and participation in the cultural and ceremonial events of the child's tribe

Subd. (c): Suggested change –

In addition to any other ~~required~~ findings required to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights,

Rule 5.486

No comment.

Rule 5.487

Subd. (a): Suggested changes for consistency with CRC 5.480.

Any Indian child who is the subject of any action for foster-care placement, guardianship or conservatorship placement, custody placement under Family Code 3041; declaration freeing a child from the custody and control of one or both parents, ~~or~~ termination of parental rights, preadoptive placement, or adoptive placement; any parent or Indian custodian from whose custody such child was removed; and the Indian child's tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

Subd. (b): Suggested change –

If the Indian child is a dependent child or ward of the juvenile court or the subject of a pending petition, the juvenile court is a court of competent jurisdiction with the authority to hear the request to invalidate the ~~foster placement or termination of parental rights~~ child custody proceeding.

Subd. (c)(2): Delete “s” from “sections.”

… where the court may consider all placement options as stated in Welfare and Institutions Code section~~s~~ 361.31(b), (c), (d), and (h).

Rule 5.570

Subd. (h)(1)(B): Change for consistency with proposed changes to subd. (e)(5) & (6).

If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided or, in the case of an Indian child, 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.

Rule 5.668

Subd. (c)(1)(D): Change "possess" to "possesses" to correct grammar.

Subd. (c)(3): Delete first two commas and insert "the."

If it is known~~,~~ or there is reason~~,~~ to know that the case involves an Indian child, the court shall proceed in accordance with rules 5.481 et seq.

Suggest adding **subd. (c)(4)**:

If there is reason to believe that the case involves an Indian child, the court shall proceed in accordance with Welfare and Institutions Code section 224.2(e).

Subd. (d): Query – Should "Indian custodian" be added? (Note: WIC § 16010(f) uses "parent" only.)

The court must order each parent, ~~and~~ guardian, and Indian custodian present either to complete *Your Child's Health and Education* (form JV-225) or to provide the information necessary …

Rule 5.674

Subds. (c)-(e): **Query** – Should "Indian custodian" be added wherever "parent or guardian" appears? E.g., "If the court orders the child detained at the detention hearing and no parent, ~~or~~ guardian, or Indian custodian is present and no parent, ~~or~~ guardian, or Indian custodian has received actual notice of the detention hearing, …" (See amendments to WIC § 319 made by AB 3176.)

Rule 5.676

Subd. (a)(2): Add "or Indian custodian."

Continuance in the home of the parent, ~~or~~ guardian, or Indian custodian is contrary to the child's welfare; and

Subd. (b): Delete first comma. Suggest breaking text into two sentences.

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 t~~The court must state~~s~~ the facts supporting this finding on the record.

Subd. (c)(1): Add ", guardian's, or Indian custodian's."

A statement of the reasons the child was removed from the parent's, guardian's, or Indian custodian's custody;

Subd. (c)(5): Add ", guardian, or Indian custodian." **Query**: Should "extended family member" (see WIC § 319(h)(1)(A)(i)) be added?

If continued detention is recommended, information about any parent, ~~or~~ guardian, or Indian custodian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member as defined under section 362.7 or, if the child is an Indian child, extended family member as defined under section 224.1 with whom the child may be detained.

Subd. (d)(3): Suggest **i**nserting "the whereabouts of" –

If the whereabouts of the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, …

Rule 5.678

Subd. (a): Move second comma as indicated.

The court must order the child released from custody unless the court makes the findings specified in section 319(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).

Subd. (b): Query – Should this be deleted (and the subsequent subdivisions be relettered)? There are no longer any factors to be considered in § 319(d).

Subd. (c): Query – Should a citation to 25 U.S.C. § 1912(d) be added to the subtitle?

(§ 319; 25 U.S.C. § 1912(d); 42 U.S.C. § 672)

Subd. (c)(2): Change for consistency with § 319(f)(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~~ provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family, and that those active efforts are documented in detail in the record, and must make one of the following findings:

Subd. (c)(4): Change for consistency with § 319(f)(2).

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, or where it is known or there is reason to know the child is an Indian child, no active efforts that would provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family.

Subd. (c)(5): Suggest changing "(h)" to "(j)." Subd. (i) pertains specifically to emergency removals under ICWA. Subd. (j) authorizes orders regarding temporary educational or developmental services decisionmaking.

If the court orders the child detained, the court must proceed under section 319 (g)-(~~h~~j).

Subd. (f)(1) & (2): Delete first comma. (See, e.g., WIC § 319(e)(2), (h)(1)(C); CRC 5.678(g).)

If it is known~~,~~ or there is reason to know the child is an Indian child, …

Subd. (g): Add citation to WIC § 319.4 to title.

Hearing for return of custody of Indian child after emergency removal when emergency has ended (§ 319.4)

Rule 5.690

Subd. (a): Add citation to WIC § 309 to citations in title.

Social study (§§ 280, 309, 358, 358.1, 360, 361.5, 16002(b))

Rule 5.725

No comment.

ICWA-005-INFO

Page 1, par. 1: Delete first comma (see, e.g., par. 2).

Try to find contact information for the child's parents~~;~~ or other legal guardian, …

Page 1, last two paragraphs in section on ICWA-010(A): Suggested edits for clarity –

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. (You have reason to believe the child is an Indian child if any of the people you question answers yes to any of your questions.) 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.~~

Contact~~s with the tribe or tribes should include contacting the~~ each tribe's designated agent for service of notice under the Indian Child Welfare Act, as published in the ~~f~~Federal ~~r~~Register, by telephone, facsimile, or email. ~~and sharing~~ Then share with ~~the~~ each tribe ~~or tribes~~ the information ~~identified by~~ the tribe ~~as necessary~~ needs to ~~make a determination about~~ determine the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

Page 1, subtitle in section on ICWA-030: Suggested edits for clarity –

~~Some tips to help you figure out if~~ Examples of facts that would give you ~~have a~~ reason to know the child is an Indian child

Page 1, numbered paragraphs in section on ICWA-030: Suggested edits –

1. ~~If t~~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 t~~The child, the child's parents, or an Indian custodian live in a ~~predominately~~ predominantly Indian community~~; or~~.

3. ~~If t~~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~~ the child is an Indian child. There ~~also~~ may be other information that would also give you reason to know ~~that~~ the child is an Indian child

Page 2, subtitle and paragraph after numbered paragraphs: Suggested edits –

~~Tip on h~~How to find the address for the child's tribe or tribes

… You can ~~link to~~ find the Federal Register list, and other resources related to ICWA, on the Bureau of Indian Affairs website at …

Page 2, boxed advisement at bottom of page: Correct the statutory citation.

(Welf. & Inst. Code, § 224.~~2~~3(e).)

ICWA-010(A)

Item 2:

[] I have not yet been able to complete the inquiry about the child's Indian status because:

I understand that I have an affirmative and continuing duty to complete this inquiry; ~~and~~ I will do it ~~as soon as possible,~~ and advise the court of my efforts as soon as possible.

[] I have asked or [] I am advised by and, on information and belief, confirm that ~~they have~~ this person has completed the inquiry by asking the child, the child's parents, and other required and available ~~individuals~~ persons about the child's Indian status. The ~~individuals~~ persons questioned ~~include~~ are:

~~Person questioned:~~
Name:
Address:
City, state, zip:
Telephone:
Date questioned:
Relationship to child:

~~Person questioned:~~
Name:
Address:
City, state, zip:
Telephone:
Date questioned:
Relationship to child:

Item 5f: Change "possess" to "possesses" (or "has").

Either parent or the child possesses an Indian identification card …

ICWA-020

Item 5f: Change "possess" to "possesses" (or "has").

Either parent or the child possesses an Indian identification card …

Right footer: Change § 224.3 to "§ 224.2."

ICWA-030

Page 2, item 4d: Insert "additional" before "days."

… the court will give up to 20 additional 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.

Page 2, item 5b: Insert a period after "unavailable."

Page 2, item 5d: Suggested changes –

Information about the child's bBiological relatives ~~information~~ is listed below. (This information is required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.) (If ~~Indicate if~~ any of the information requested below is unknown or does not apply~~.~~., specify "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.)~~

Page 2, item 5e: Suggested changes –

[] ~~If t~~The chart does not ~~represent~~ provide the gender ~~identities of the individuals~~ identity of one or more persons in the child's family tree~~,~~.; ~~please attach~~ The correct information is provided on an ~~appropriate equivalent~~ attachment.

Page 2, blank for name of Biological Father: Suggest deleting "maiden, married, and."

Name (*include ~~maiden, married, and~~ former names or aliases*):

Page 3, blanks for names of Maternal and Paternal Grandfathers: Suggest deleting "maiden, married, and."

Page 4, blanks for names of Maternal and Paternal Great-grandfathers: Suggest deleting "maiden, married, and."

Page 5, blanks for names of Maternal and Paternal Grandfathers: Suggest deleting "maiden, married, and."

Page 5, item 5h: Query – Shouldn't the blanks in the left column read "Mother's Biological Grandmother (Child's Paternal Great-grandmother)" and "Mother's Biological Grandfather (Child's Paternal Great-grandfather)"? In other words, items 5g and 5h should exactly match each other, with "Maternal" on the left and "Paternal" on the right.

Page 5, item 5i: Initial cap on "other."

Information on Indian Ancestry of Other Lineal Ancestors

Page 7, items 6a and 6b: Delete "birth" as redundant.

Biological ~~birth~~ father is named on birth certificate.
Biological ~~birth~~ father has acknowledged parentage.

Page 7, boxed text above item 7 and items 7 & 8: Insert "named" after "child" for consistency with rest of form.

… in tracing the ancestry of the child named in 1.
Has the child named in 1 or any members …
Tribal affiliation and location of child named in 1
Relationship to child named in 1

Page 7, items 7a, 7b, 7c, 7d: Suggest changing "Name/relationship to child" to "Name and relationship to child."

Page 7, item 7c: Suggested changes –

Lived on federal trust land, on a reservation, ~~or~~ rancheria, or ~~an~~ allotment, or in an Alaska Native village?

Page 9: Typo -- Insert space between "receipt" and "requested."

… registered or certified mail, return receipt requested, fully prepaid.

Page 9, in all three paragraphs**:** Suggested changes --

(~~Except that t~~The telephone numbers shown below were not placed on the envelopes

Page 9, all three paragraphs**:** Change "224.2" to "224.3" and insert space between "on" and "(*date*)."

… Welfare and Institutions Code section 224.~~2~~3.)
… at *(place)*: on *(date)*:

Page 9, certificate for probate proceedings: Insert space between "Notice" and "under" and between "the" and "United."

… they must be disclosed in the *Notice* under Family Code …
… and deposited with the United States Postal Service …

Page 10, note near bottom of page: Change "tribe chairman" to "tribal chairperson" (see current CRC 5.481(b)(4)).

Note: Notice to the tribe must be sent to the ~~tribe chairman~~ tribal chairperson or designated authorized agent for service.

ICWA-040

Page 3, items 2a and 2b: Suggest switching par. (3) [CASA] with par. (7) [parent].

ICWA-060

Page 1, item 1: Query -- Is "Child's name" necessary? It's already in the caption. This item could simply require "Child's date of birth."

Page 2, item 5b(4): Insert "a" before "loss" (see current CRC 5.483(h)).

… will result in a loss of appellate jurisdiction.

Page 2, item 6: Suggested changes –

Proof that the tribe has accepted transfer is attached, and jurisdiction is terminated.

ICWA-070

Item 1: Query -- Is "Child's name" necessary? It's already in the caption. This item could simply require "Child's date of birth."

Item 2a: Insert "*(specify):*" after "other party."

Item 5: Suggested changes –

There is new information showing a change in circumstances since that emergency removal~~,~~ and ~~that~~ the child's placement is no longer necessary …

ICWA-080

Item 1: Query -- Is "Child's name" necessary? It's already in the caption. This item could simply require "Child's date of birth."

Item 2: Use lower case for "finds and orders."

… the court ~~F~~finds and ~~O~~orders:

Item 2b: Query – Need to specify date, time, location of hearing?

ICWA-090

Item 1: Query -- Is "Child's name" necessary? It's already in the caption. This item could simply require "Child's date of birth."

Item 2b: Change "Parents' attorney" to "Parent's attorney." (See form ICWA-060.) Use upper case "O" for "other:"

Item 3: Use lower case for "finds and orders."

… the court ~~F~~finds and ~~O~~orders:

JV-100

Page 1, items 1f, 1g, 1h: Query – Should "biological" be changed to "genetic"? (See AB 2684 [amendments to Uniform Parentage Act].)

Page 1, item 2a: Suggested change –

I have asked whether the child is or may be a member of an Indian tribe or is eligible for membership and the biological child of a member, or on information and belief, I am aware that the inquiry has been completed, and ~~attach~~ the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

Alternatively, split item 2a into items 2a and 2b, then reletter 2b to 2c:

a. I have asked whether the child is or may be a member of an Indian tribe or is eligible for membership and the biological child of a member; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

b. On information and belief, I am aware that the inquiry has been completed; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

~~b~~c. 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~~ duty 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.

Suggested alternative wording for 2c:

Inquiry about ~~whether~~ the child's possible status as an Indian 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 …

JV-110

Page 2, item 2: See suggested changes above for form JV-100, items 2a and 2b.

JV-320

Page 1, item 4b: Change "224.2" to "224.3."

Page 1, right footer: Add WIC § 361.31 (authority for item 17). Change Cal. Rules of Court, rules "5.485" to "5.486" to reflect the proposed renumbering of ICWA rules. Query – Add citation to 25 U.S.C. § 1912(f)?

Page 2, item 8b(3): Suggested change to match language in 25 U.S.C. § 1912(f) --

… is likely to ~~cause~~ result in serious emotional or physical damage to the child.

Page 2, line below item 9e: Change to reflect proposed change in form.

(If item 9 is checked, go to item ~~17~~18.)

Page 2, line below item 10e: Change to reflect proposed change in form.

(If item 10 is checked, go to item ~~17~~18.)

Page 3, line below item 14a: Change to reflect proposed change in form.

(… If item 14a is checked, provide for visitation …, and go to item ~~17~~18.)

Page 3, line below item 15d: Change to reflect proposed change in form.

(If this item is checked, go to item ~~17~~18.)

Page 4, line below item 16a: Change to reflect proposed change in form.

(If item 16a is checked, provide for visitation …, and go to item ~~17~~18.)

Page 4, item 17a: Suggested change –

The permanent plan is ~~something other than~~ not adoption, and …

Page 4, item 17a(1): Delete space between "§ 224.1" and "(c)." Suggested changes (because WIC § 224.1(c) merely refers to 25 U.S.C. § 1903(2) and because that statute defines "extended family member," not "extended family") –

The child is placed with ~~a member of~~ the child's extended family member as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 5, item 18: Insert check box and line -- "The child's placement is necessary." (See item 17 on current form JV-320.) Alternatively, change to "The child's placement is necessary and appropriate."

Page 5, between items 18 and 19: Insert check box and line -- "The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan." (See item 19 on current form JV-320.)

Page 5, item 20: Suggested change –

The child is, or there is reason to know the child is, an Indian child, ~~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.

Page 5, item 22: Change "items 22 and 23 … and items 24 and 25." As currently numbered in the proposal, it should read "items 23 and 24 … and items 25 and 26," but further renumbering may be needed because of the omission of "child's placement is necessary" finding and the "reasonable efforts" finding (currently items 17 and 19).

Page 5, item 25: Insert period in "Dept.:"

JV-405

Page 1, item 2: Change "Dispositional" to "Detention."

Page 1, item 2h(4), Page 2, items 6, 8, and 9, Page 3, item 14, Page 4, items 15 and 17: Change "biological" to "genetic."

Page 2, item 6d: Change semicolon after "legal guardian" to a comma.

Page 3, item 12a, second bullet point: Suggested change (see, e.g., fourth bullet point) –

Whether the residence or domicile of the child, either of the child's parents, or the child's Indian custodian is on a reservation or in an Alaska Native Village …

Page 3, item 12a, third bullet point: Insert comma after "if yes" for consistency.

Page 3, item 12c(2): Insert checkboxes for (a) and (b). (See form JV-410, item 10b.)

Page 4, item 19: Insert period in "Dept.:"

JV-410

Page 1, item 2: Change "Dispositional" to "Detention."

Page 1, item 2h(4), Page 3, items 12 and 13, Page 4, item 14b, Page 5, items 17, 19, and 20: Change "biological" to "genetic."

Page 2, item 9a, second bullet point: Suggested change (see, e.g., fourth bullet point) –

Whether the residence or domicile of the child, either of the child's parents, or the child's Indian custodian is on a reservation or in an Alaska Native Village …

Page 2, item 9a, third bullet point: Insert comma after "if yes" for consistency.

Page 3, item 11a(3): Change "25 U.S.C. § 19~~11~~22."

Page 3, item 12d: Change semicolon after "legal guardian" to a comma.

Page 4, item 15c(3): Change to reflect WIC § 319(c)(2).

there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

Page 4, item 15g(6): Suggested change –

The home of ~~an~~ the Indian child's extended family member as defined in ~~Welf. & Inst. Code § 224.1~~ 25 U.S.C. § 1903(2)~~, and there is reason to know the child is an Indian child~~.

Page 4, item 15g(6) and (7): Are these choices necessary here in light of the separate item (see item 16d on page 5) for an Indian child who is being detained?

Page 4, item 15h: Change "item 13" to "item 17."

Page 5, item 16a: Delete space between "319" to "(b)." Suggested changes –

The petitioner has presented evidence that includes all of the requirements ~~of~~ listed in Welf. & Inst. Code, § ~~section~~ 319(b).

Page 5, item 16d: Suggested changes –

~~With~~ In a foster home licensed, approved, or specified by the child's tribe;
~~With~~ In an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

Page 5, item 17: Suggested change:

The county agency will provide the services below ~~will be provided~~ pending further proceedings:

Page 6, item 24: Insert period in "Dept.:"

JV-412

Page 1, item 2h(4), Page 2, item 13, Page 3, items 15, 16, and 17, Page 4, items 24 and 25: Change "biological" to "genetic."

Page 4, item 29: Insert period in "Dept.:"

JV-415

Page 1, item 2h(4), Page 3, items 9 and 10, Page 4, item 15: Change "biological" to "genetic."

Page 2, item 3: Insert "witness" after "qualified expert."

Page 2, item 8: Suggest changing "information indicating the child is an Indian child" to "information that provides reason to know the child is an Indian child" to match the language in WIC § 224.2(c).

Page 2, item 8a: Suggest changing "social worker/probation officer" to "social worker or probation officer."

Page 2, item 8d(2)(a): Suggested change –

… and work with all of the tribes ~~where~~ of which the child may be a member or eligible for membership to verify the child's status;

Page 3, item 10: Insert "a" before "court trial." Change "biological" to "genetic."

Page 3, item 11: Insert comma after "the time of the initial removal."

Page 3, item 13: Change "was …" to "were provided to the child as follows."

Page 3, item 13c: Insert "not" before "present at the hearing." For "(form JV-185)" change italics to Roman.

Page 4, items 18 and 18c: Insert period in "Dept.:"

JV-418

Title: Typo – Correct "ATTACHEMENT" to "ATTACHMENT."

Item 3b: Suggested changes –

The child is an Indian child, ~~and~~ active efforts as detailed in the record [] were [] were not made to provide~~d to~~ remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if ~~these~~ active efforts were made, they have proved unsuccessful.

Items 5 and 6: Change "biological" to "genetic."

JV-421

Page 1, items 2c, 3c, and 6, Page 2, items 9a and 9b, Page 3, item 17, Page 4, item 20g, and Page 5, items 23 and 26: Change "biological" to "genetic."
Page 1, item 5a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 5e?

Page 1, item 5b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did []did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 1, item 5d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 1, item 5e: Suggested change to provide for situations in which efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 1, right footer: Add citations to 25 U.S.C. § 1912; WIC §§ 224.1, 361.31, 361.7?

Page 2, item 12: Query – Why does this item begin with "There has been a change in the child's placement"? Don't the ICWA placement preferences apply for an Indian child whether the order is for an initial placement or a subsequent placement? If so, consider this change –

~~There has been a change in the child's placement, and t~~The child is an Indian child or there is reason to know ~~that~~ the child is an Indian child [] and there has been a change in the child's placement. Currently *(choose one)*:

Page 2, item 12a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 2, item 12c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 2, item 12d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 …

Page 3, items 15a and 16b: Change "item 17" to "item 18" due to renumbering of items in form JV-415.

Page 4, item 22: Query – Isn't this item simply a wordier version of item 4 on page 1? Should item 4 incorporate any additional verbiage from item 22 that is required by law?

Page 5, item 27a: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. …

Page 5, item 27b: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services 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 or developmental-services decisionmaking rights and responsibilities of the educational representative …

Page 6, item 34: Suggested changes –

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 described in Welf. & Inst. Code, § 361.5(a)(1)(C):

Page 7, item 36d: Insert "a" before "notice of intent."

… a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, …

JV-430

Page 1, item 1h(4) and Page 2, items 7 and 8, Page 3, item 12c: Change "biological" to "genetic."

Page 3, item 11a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 11e?

Page 3, item 11b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 3, item 11d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 3, item 11e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 3, item 15a: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. …

Page 3, item 15b: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is necessary and those rights are limited as stated in ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational or developmental-services decisionmaking rights and responsibilities of the educational representative …

Page 5, items 26 and 26c: Insert period in "Dept.:"

JV-432

Page 1, item 5a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 5c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 1, item 5d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe**,** or in 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 …

Page 2, item 7a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 7e?

Page 2, item 7b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 2, item 7d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 2, item 7e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 2, items 8a, 8b, and 9, Page 3, item 12: Change "biological" to "genetic."

Page 2, item 8: Suggested changes –

For child under ~~the age of~~ three years of age at time of initial removal or ~~a~~ member of ~~a~~ sibling group (Welf. & Inst. Code, § 361.5(a)(1)(C))

JV-433

Page 1, item 5a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 5c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 1, item 5d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe**,** or in 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 …

Page 2, item 7a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 7e?

Page 2, item 7b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 2, item 7d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 2, item 7e: Suggested change to provide for situations in which efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 2, items 8c, 9c, Page 3, items 10a, 10b, 10c, 13: Change "biological" to "genetic."

Page 2, item 9: Suggested changes –

Reunification services terminated: Child under ~~age of~~ three years of age at time of initial removal or member of sibling group (Welf. & Inst. Code, § 361.5(a)(1)(C))

Page 2, item 9b: Suggested change –

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 …

Page 3, item 10a(2): Suggested changes –

The person has not ~~had~~ contacted or visited ~~with~~ the child for six months.

Page 4, item 14d: Insert "a" before "notice of intent."

… a party must seek an extraordinary writ by filing a notice of intent to file a writ …

Page 4, item 15b: Change "remain" to "remains."

JV-435

Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 12c: Change "biological" to "genetic."

Page 3, item 11a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 11e?

Page 3, item 11b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 3, item 11d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 3, item 11e: Suggested change to provide for situations in which efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 3, item 15a: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. …

Page 3, item 15b: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services 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 or developmental-services decisionmaking rights and responsibilities of the educational representative …

Page 5, items 26 and 26c: Insert period in "Dept.:"

JV-437

Page 1, item 4a: Change "JV-430" to "JV-435."

Page 1, item 5a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 5c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 1, item 5d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 …

Page 1, item 6b: Change "JV-430, item 25" to "JV-435, item 26."

Page 1, item 7a: Insert "a" before "substantial probability." Change "biological" to "genetic."

Page 2, items 7b, 8, 11: Change "biological" to "genetic."

Page 2, item 7a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 7e?

Page 2, item 7b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 2, item 7d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 2, item 7e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 2, items 8c, 9c, Page 3, items 10a, 10b, 10c, 13: Change "biological" to "genetic."

JV-438

Page 1, item 3a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 3e?

Page 1, item 3b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 1, item 3d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 1, item 3e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 1, item 4c, Page 2, item 12: Change "biological" to "genetic."

Page 1, item 8a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 2, item 8c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 2, item 8d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe**,** or in 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 …

Page 4, item 15d: Insert "a" before "notice of intent."

… a party must seek an extraordinary writ by filing a notice of intent to file a writ …

Page 4, item 15g: Insert "is" before "*(specify date).*"

JV-440

Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 13c: Change "biological" to "genetic."

Page 3, item 12a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 12e?

Page 3, item 12b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 3, item 12d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 3, item 12e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 3, item 16a: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. …

Page 3, item 16b: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services 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 or developmental-services decisionmaking rights and responsibilities of the educational representative …

Page 5, items 27 and 27c: Insert period in "Dept.:"

JV-442

Page 1, item 3a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 3e?

Page 1, item 3b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 1, item 3d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 1, item 3e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 1, item 4c, Page 2, item 12: Change "biological" to "genetic."

Page 1, item 8a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 8c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 2, item 8d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe**,** or in 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 …

Page 4, item 15d: Insert "a" before "notice of intent."

… a party must seek an extraordinary writ by filing a notice of intent to file a writ …

Page 4, item 15g: Insert "is" before "*(specify date)*."

JV-443

Page 1, item 5a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 5c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 1, item 5d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe**,** or in 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 …

Page 1, item 7a, Page 2, items 7b and 8, Page 3, item 11: Change "biological" to "genetic."

Page 2, item 7b: Change "§ 366.22" to "§ 366.25."

… the 24-month permanency hearing under Welf. & Inst. Code, § 366.2~~2~~5 …
Page 2, item 9: Insert "is" before "*(specify date)*."

JV-455

Page 1, item 1h(4), Page 2, items 7 and 8, Page 3, item 13c: Change "biological" to "genetic."

Page 3, item 12a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 12e?

Page 3, item 12b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 3, item 12d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 3, item 12e: Suggested change to provide for situations in which efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 3, item 16a: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is not necessary. The parents hold educational or developmental-services decisionmaking rights and responsibilities in regard to the child's education and developmental services, including those described in rule 5.650(e) and (f) of the California Rules of Court. …

Page 3, item 16b: Suggested changes –

A limitation on the right of the parents to make educational or developmental-services decisions for the child is necessary and those rights are limited as stated in ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational or developmental-services decisionmaking rights and responsibilities of the educational representative …

Page 5, items 27 and 27b: Insert period in "Dept.:"

JV-456 (not included in proposal SPR 19-42)

Page 1, items 2a and 3: Change "biological" to "genetic."

JV-457

Page 1, item 4a: Suggested changes --

Affirmative, active, thorough, and timely efforts [] have [] have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and if these efforts were made, they have proved unsuccessful;

Query – Should "and these efforts have proved unsuccessful" be deleted because this finding is available in item 4e?

Page 1, item 4b: Suggested change (see WIC § 224.1(f)) –

These efforts [] did [] did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;

Page 1, item 4d: Suggested change (see WIC § 224.1(f)) –

These efforts and the 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 members, Indian custodians, and the 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.

Page 1, item 4e: Suggested change to provide for situations in which active efforts were *not* made –

The~~se~~ efforts made as indicated above have proved unsuccessful.

Page 1, items 5c: Delete space between "child" and colon. Change "biological" to "genetic."

Page 1, item 6a: Suggested change –

The child is placed with a member of the child's extended family as defined by ~~Welf. & Inst. Code § 224.1(c)~~ 25 U.S.C. § 1903(2); or

Page 1, item 6c: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family~~,~~ or in a foster home licensed, approved, or specified by the Indian child's tribe, …

Page 1, item 6d: Suggested changes –

An exhaustive search was made for a placement with a member of the child's extended family, ~~or~~ in a foster home licensed, approved, or specified by the Indian child's tribe, or in 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 …

Page 3, item 13d: Insert "a" before "notice of intent."

… a party must seek an extraordinary writ by filing a notice of intent to file a writ …

Page 3, item 13g: Insert "is" before "*(specify date).*"

Page 3, item 15: Change "biological" to "genetic."

JV-600

Page 1, item 1g, 1h, 1i.: Change "biological" to "genetic."

Page 2, item 4a: Suggested changes –

I have asked whether the child is or may be a member of an Indian tribe or is eligible for membership and the biological child of a member, or on information and belief, I am aware that the inquiry has been completed, and ~~attach~~ the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

Alternatively, split item 4a into items 4a and 4b, then reletter 4b to 4c:

a. I have asked whether the child is or may be a member of an Indian tribe or is eligible for membership and the biological child of a member; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

b. On information and belief, I am aware that the inquiry has been completed; the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

~~b~~c. 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~~ duty 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.

Suggested alternative wording for 4c:

Inquiry about ~~whether~~ the child's possible status as an Indian 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 …

Name: Mike Roddy **Title:** Executive Officer

Organization: Superior Court of California, County of San Diego

☒ Commenting on behalf of an organization

Address: Central Courthouse, 1100 Union Street

City, State, Zip: San Diego, California 92101

Email: invitations@jud.ca.gov

Mail: Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 10, 2019.

Appendix B
Summary of comment chart by topic

Proposed Amendment to rule 5.480 Application

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.

Comments declined to follow:

- Remove the word conservatorship from this rule and throughout the rules because conservatorships apply to adults: Decline to follow because conservatorships also apply to formerly married persons under the age of 18 and are therefore governed by ICWA per the probate code;
- Add subsection stating that information of native American ancestry does not in and of itself provide reason to know, there must be information related to membership in a federally recognized tribe: Decline to follow because it is not appropriate to single one factor and create an evidentiary standard for it in the rules. Currently the rules conform to the factors discussed in the regulations and statute;
- Include language requiring ICWA notice for every hearing: Decline to follow because not consistent with the regulations or statute that require ICWA notice only for specified hearings, but do clarify that tribes, parents, Indian custodian entitled to notice of all other hearings in same manner as other parties;
- Change the word seeking to requesting: Decline as unnecessary;
- Revise the language in (a) concerning the nature of the duty of inquiry: Decline as unnecessary; and
- Revise the language of (2)(C) to require that the court order all relatives present in court to complete the ICWA-020 *Parental Notification of Indian Status* form: Decline to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know of have reason to know the child is an Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance.

Proposed Amendment to rule 5.481 Inquiry and Notice

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 the child may be an Indian child[1];

[1] Welf. & Inst. Code, § 224.2(b), as amended by AB 3176.

- 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;[2]
- 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; [3]
- Amend what gives the court "reason to know" the child is an Indian child;[4]
- 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;[5] and
- 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.[6]

Revisions based on comments:

- Add to the end of rule 5.481(a)(2) language clarifying that inquiry must take place at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement rather than just at the initial hearing in the case, as recommended by the California Tribal Families Coalition consistent with the ongoing duty of inquiry as set out in the federal ICWA regulations and WIC 224.1(d);
- Update and correct the statutory references in 5.481(a)(4)(A) as recommended by the Superior Court of San Diego;
- Revise 5.481(a)(4)(C) to add the requirement to share information with tribes as part of further inquiry and due diligence, provide new information to the tribes as it is obtained, and to provide the court with evidence of these efforts on an ongoing basis. These

---

[2] *Id.*

[3] 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).

4 Welf. & Inst. Code, § 224.2(d), as amended by AB 3176.

5 Welf. & Inst. Code, § 224.2(i)(2).

6 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.

changes reflect the ongoing nature of the duty of inquiry and the requirements of WIC 224.2(e)(3) and (j) to share information with tribes;

- Revise rule 5.481(b)(3) to provide additional alternative findings options to the court upon review of the evidence of further diligence and further inquiry. As revised it separates out a finding that the court "knows" the child is an Indian child from a finding that the court "has reason to know" the child is an Indian child;
- Add to rule 5.481(b) a subdivision (4) to clarify that a tribe's determination on membership is conclusive, and to clarify that lack of enrollment does not mean the child is not a member or eligible for membership unless the tribe confirms that enrollment is required for membership;
- Revise rule 5.481(c)(1) regarding notice to add the word "initial" with respect to the hearings for which formal ICWA notice must be provided and add language at the end consistent with WIC 224.2(g) clarifying that a tribe, Indian custodian and parents are entitled to the same notice as all other parties for hearings that do not require ICWA notice by registered mail, return receipt requested and for continued hearings. The word initial and the reference to continued hearings is added in response to the recommendation from the Sacramento County Counsel's Office that once ICWA notice of a hearing has been provided, if that hearing is continued, notice of the continued hearing date does not need to be by registered mail return receipt requested should not be required. As discussed in the comment chart this situation is similar to the law concerning a parent's right to notice of a continued hearing under Welf. & Inst. Code §366.26 and the specific noticing requirements set out in section 366.23 concerning this hearing, the more stringent noticing requirements apply only to the initial hearing. If the stringent noticing requirements were complied with for the initial hearing and the party is present in court when the hearing is continued that satisfies the parties right to notice of the continued hearing. (*In re Malcolm D.*, (1996) 42 Cal. App.4th 904 at p.913) If the party does not participate in the original hearing they are entitled to receive notice of the continued date that is reasonably calculated under all the circumstances to apprise them of the hearing and afford them an opportunity to present any objections (Id. At pp. 258-259). Such notice does not need to be by certified mail, return receipt requested; and
- Add an advisory committee comment referencing the provisions of the federal regulations that specify how to contact tribes and WIC 224.2(e) that sets out the minimum requirements of tribal contacts as part of the obligations of further inquiry and due diligence. One comment recommended adding detailed language from the federal regulations into the rule itself. Staff propose this advisory comment in lieu of repeating the lengthy language from the regulations and statute in the rule.

Comments that were not followed:

- Capitalize the word "tribe" throughout the rules: Decline to follow because just like state or city, rules of grammar dictate that the word tribe be capitalized when it is part of a proper name (ie. State of California, Cherokee Tribe of Oklahoma), but not when being used in a general manner;
- Add subsection stating that information of native American ancestry does not in and of itself provide reason to know, there must be information related to membership in a federally recognized tribe: Decline to follow because it is not appropriate to single out

one factor and create an evidentiary standard for it in the rules. Currently the rules conform to the factors discussed in the regulations and statute;

- Include language requiring ICWA notice for every hearing: Decline to follow because not consistent with the regulations or statute that require ICWA notice only for specified hearings, but do clarify that tribes, parents, Indian custodian entitled to notice of all other hearings in same manner as other parties;
- Revise the language of (2)(C) to require that the court order all relatives present in court to complete the ICWA-020 *Parental Notification of Indian Status* form: Decline to follow this recommendation. Consistent with the statute, the court is required to ask relatives present in court if they know of have reason to know the child is an Indian child. Ordering non-parties to complete the ICWA-020 is burdensome and leads to problems of possible contempt, etc. for non-compliance;
- Add to 5.481(a)(4)(C) a requirement that if notice has previously been sent and new information is obtained, that new information must be provided on an ICWA-030 form and all tribes re-noticed: do not require re-noticing on the ICWA-030 form, but do include a requirement that all new information be expeditiously provided to the tribes; and
- Revise the language of 5.481(b)(3)(A): decline because section is already clear enough and proposed language is very lengthy.

Proposed Amendment to rule 5.482 Proceedings after Notice

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;[7]
- 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.

Revisions based on comments:

- Revise rule 5.482(a) governing the proceedings after ICWA notice has been provided by reinstating the exceptions contained in 5.482(a)(2) and (3), to the general rule that no hearing can take place until 10 days after notice has been received. These had been removed on the assumption that they were no longer necessary due to the unique requirements for detention hearings now set out in WIC 309. Several comments pointed out that these exceptions may still be relevant;

7 See amended § 224.3(a) and (d).

- Revise rule 5.482(b) regarding proof of ICWA notice to clarify that the exceptions contained in subsection (a)(2) and (3) also apply to the requirement to file proof of notice in advance of the hearing;
- Revise rule 5.482(c) to reflect the authority to find ICWA does not apply found in WIC 224.2(i)(2) rather than deleting the subsection. The proposal had deleting subsection (c) because it implemented the 60-day provision in former WIC 224.2(e)(3) which has now been deleted. However, as a commenter pointed out, WIC 224.2(i)(2) provides a new basis for the court to make a finding that ICWA does not apply and that authority should be reflected in the rule; and
- Revise rule 5.482(d) to clarify that a tribe and Indian custodian's right to intervene is not discretionary.

Comments that were not followed:

- Revise subsection (f) to add specific examples of active efforts set out in the federal regulations: decline to follow because this subsection relates to placement, not active efforts.

Proposed Amendment to rule 5.483 Dismissal and transfer of case

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.

Revisions based on comments:

- Revise subdivision 5.483(a)(1) to clarify that the requirements regarding cases that may be under exclusive jurisdiction of a tribal court are of an ongoing nature and must be followed when information is received "at any stage of the proceeding" suggesting the child may be under the exclusive jurisdiction of a tribe;
- Revise subdivision 5.483(a)(3) to add clarifying language with respect to the exception to the dismission requirement for emergency situations. The added language is consistent with WIC 305.5(c);
- Revise subdivision 5.483(d) to add the requirement that the court ensure that the tribal court is promptly notified when a petition is received requesting a transfer to that tribal court, and authorizing the state court to request a timely response from the tribal court about whether it would accept or decline the transfer;
- Revise rule 5.483(d)(2)'s list of factors that can and cannot be considered as part of the assessment of whether there is good cause not to transfer a case to tribal court to more closely follow the precise language of the regulations and statute.

Comments there were not followed:

- Revise 5.483(a) to clarify whether ward refers to any tribal court custody order or only custody orders related to protective reasons: Decline to follow because it is not appropriate to establish a legal standard by rule of court that is not set out in the statute; and
- Revise (d)(1)(B) to add refence to the tribe not having a tribal court as a reason to decline to transfer: Decline to follow because this language was removed by 25 CFR 23.117 and WIC 305.5(e). Current rule language tracks federal regulation and California statute.

Proposed Adoption of rule 5.484 Emergency proceedings involving an Indian child

The new federal regulations, as set forth in 25 Code of Federal Regulations part 23.113 and implemented in AB 3176,[8] 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 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.

Revisions based on comments:

- The name of the form to request the ex parte hearing was added to subdivision 5.484(b)(1);
- One commenter requested further clarity on the procedures governing the ex parte application created by this rule and specifically whether notice must be given. Subdivision 5.484(b)(3) was added in response to this comment referring to the

[8] 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).

procedures set out in the division 3 civil rules governing ex parte procedures. Per rule 3.10 those standards including notice provisions apply to juvenile cases.

Comments that were not:

- Revise and restructure this rule to more closely follow the language contained in the statute (see comments of Children's Law Center in appendix): decline to follow this recommendation because it unnecessarily duplicates statutory language regarding social worker duties in the rule of court. The proposed rule of court reflects the requirements of WIC 319 regarding the court duties and requirements. Further, this rule (and other ICWA rules) apply to family and probate proceedings governed by ICWA and therefore do not reference all of the requirements of the WIC.

Proposed Amendment and renumbering of former rule 5.484 to rule 5.485 Placement of an Indian child

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.

Revisions based on comments:

- Revise rule 5.485(b) to add the language specifying that all placements must be in the least restricting setting that most approximates a family situation and in which the child's special needs if any may be met, and the "clear and convincing" standard of evidence for a finding that there is good cause to deviate from the placement preferences; and
- Add to rule 5.485(b)(4) language that a finding that there is good cause to deviate from the placement preferences does not affect the requirement for a diligence search for a subsequent placement within the placement preferences.

Proposed Amendment and renumbering of former rule 5.485 to rule 5.486 Termination of parental rights

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.

Comments that were not followed:

- Add "removal" to the title and add various evidentiary standards to subsection (a) concerning placement of an Indian child – Decline to follow because this rule does not apply to removals and standards for placement are dealt with in rule 5.485 (formerly 5.484)

Proposed 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.

Revisions to rule 5.487 based on comments:

- Revise subdivision (a) of the rule to include all of the categories of case type that may constitute an "Indian child custody proceeding" under California law.

Proposed Amendment to rule 5.570 Request to change court order (petition for modification)

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.

Revisions based on comments:

- Revise subdivision (h)(1)(B) regarding a request to terminate reunification services to specify that where the case involves an Indian child the court must find by clear and convincing evidence that active efforts have been provided and have proved unsuccessful before reunification services may be terminated.

Proposed Amendment to rule 5.668 Commencement of [initial] hearing – explanation of proceedings

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.

Revisions due to comments:

- Revise proposed subsection (c) concerning ICWA inquiry by adding the language "At the first appearance in court of each party" at the beginning of subsection (c)(1);
- Further revise subsection (c) to clarify the distinct requirements when there is "reason to believe" the case involves an Indian child as opposed to "reason to know" by creating a new 5.668(c)(3) and additional language to 5.668(c)(4).

Proposed Amendment to rule 5.674 Conduct of hearing; admission, no contest, submission

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.

Revisions based on comments:

- Revise subsections (c), (d) and (e) to add Indian custodian and Indian child's tribe to the parties who may assert the rights specified.

Proposed Amendment to rule 5.676 Requirements for detention

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.

Revisions based on comments:

- Add Indian custodian to subsection 5.676(a)(2);
- Revise subsection 5.676(b) to add the requirement that the court must state on the record the facts supporting a finding that detention of an Indian child is necessary to prevent imminent physical damage or harm to the child.

Comments not followed:

- Revise (d)(8) by adding that the child is believed to be a ward of a tribal court in addition to resides or domiciled on a reservation where the tribe exercises exclusive jurisdiction: Decline to follow because it does not align with the language of WIC 319(b)(8) or the regulations.

Proposed Amendment to rule 5.678 Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives

Rule 5.678 governs the findings that must be made to support a detention order, the factors the court must consider, whether 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;
- Include reference to 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.

Revisions based on comments:

- Revise subsection 5.678(c)(2) and (4) to augment the language of active efforts "…to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family…" and to require under 5.678(c)(2) an assessment of whether those efforts have been successful;
- Revise subsection 5.678(c)(5) reference the additional requirements when the case involves and Indian child; and
- Revise subsection 5.678(f) to reference the clear and convincing standard of evidence required to deviate from the placement preferences and to reference the requirements of rule 5.485.

Comments not followed:

- Delete subsection (f) concerning time limitation because a detention hearing can never be continued for more than 30 days and an Indian child custody proceeding is started by the filing of a petition which can always be done within 30 days: decline to follow because WIC 319(e)(2) specifies what is required to continue a detention hearing beyond 30 days. The rule is consistent with the statutory language. Not clear that filing a petition is sufficient to "initiate an Indian child custody proceeding…" WIC 224.1(l) defines an emergency proceeding as the initial petition hearing held pursuant to section 319. Under the *Guidelines issued by the BIA* the initiation of a child custody proceeding requires a proceeding "…to which the full set of ICWA protections would apply." (see page 25) In

California this is generally not until the dispositional hearing at which a QEW would testify.

Proposed Amendment to rule 5.690 General Conduct of a Dispositional Hearing

This rule governs the general conduct of a disposition hearing. The proposed amendments respond to changes in Welfare and Institutions Code section 309 and 352 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; and adding a subdivision (d) in response to 352(b) confirming that a dispositional hearing cannot be continued if it would result in the dispositional hearing being completed longer than 60 days, or 30 days in the case of an Indian child, after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring a continuance. If the court knows or has reason to know that the child is an Indian child, the absence of the opinion of a qualified expert witness shall not, in and of itself, support a finding that exceptional circumstances exist.

Revisions based on comments:

- Add subdivision (d) concerning limitations on continuances consistent with Welfare and Institutions Code section 352(b) in response to comments received from the California Tribal Families Coalition, who advocated on behalf of tribal communities for AB 3176.

Forms revisions based on comments:

- Expand the language used to ask about and reference residence and domicile from in ICWA-005-INFO 2.c and ICWA-020 3 d. and e., to include “a reservation, Rancheria, Alaska Native Village or other tribal trust land.” instead of just saying “Indian country”;
- Revise item 5.d.(3) of the ICWA-060 which sets out the required findings and orders when the court finds that there is good cause to deny a request for transfer to tribal court to clarify that there must have been an evidentiary hearing on the issue;
- Revise the inquiry language at item 2 of the JV-100 and JV-110 and item 4 of the JV-600 to allow separate options for when the individual signing the petition has completed the ICWA inquiry themselves, and when someone else has completed the ICWA inquiry. In some counties the social worker will complete the inquiry and provide that information to county counsel, but county counsel is the one who completes and signs the petition;
- Revise item 17 of the JV-320 concerning where the placement fits within the ICWA placement preferences by replacing “exhaustive search…” with “diligent search…”. The language used in the federal regulations and guidelines requires a diligent search for a placement within the placement preferences, not an exhaustive search. This same change has been made in all the forms that contain these placement preference findings; and
- Revise JV-320 item 17.s.(6) by adding the clear and convincing evidence standard that is required for the court to find good cause to deviate from the placement preferences.

Suggested forms revisions not accepted:

- Add language to the JV-405 and JV-410 forms from the federal guidelines on treating the child as an Indian child when status is uncertain: decline to follow because the language is too lengthy to include in the forms. Consider incorporating into information sheets and trainings instead.

Suggested revision to Rule 5.531 Appearance by telephone that was not part of original proposal:

- Add a subdivision (d) mandating that the court allow alternative methods of participation in ICWA cases if the court has the capacity: Decline to follow because although consistent with the federal regulations, it is not consistent with the WIC code.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: August 21, 2019

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

Rules and Forms: Miscellaneous Technical Changes Amend rules 8.380, 8.384, 8.851, 8.866, 8.868, 8.917 and 8.919; and revise forms APP-013; CIV-100, CIV-105; CR-131, CR-132, CR-133, CR 134, CR-141; CR-142; GC-363, GC-366; and POS-040.

Committee or other entity submitting the proposal:
Judicial Council staff

Staff contact: Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rules 8.380, 8.384, 8.851, 8.866, 8.868, 8.917, and 8.919; and revise forms APP-013, CIV-100, CIV-105, CR-131-INFO, CR-132, CR-133, CR-134, CR-141-INFO, CR-142, GC-363, GC-366 and POS-040

Recommended by
Judicial Council staff
Susan R. McMullan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
August 21, 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 January 1, 2020:

1. Amend rule 8.380(a) to update the reference to *Petition for Writ of Habeas Corpus* (form MC-275), which was relettered and renumbered as form HC-001;
2. Amend rule 8.384(a)(1) to update the reference to form MC-275 to form HC-001;

3. Amend the Advisory Committee Comments to rules 8.851, 8.866(a), 8.868, 8.917, and 8.919 to update the reference to *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), which was relettered and renumbered as form CR-105;
4. Revise form APP-013 to refer to the correct rule of court in the footer;
5. Revise form CR-131-INFO, items 14a and 14b, to update the references to form MC-210 to form CR-105;
6. Revise *Request for Entry of Default* (form CIV-100) and *Request for Entry of Default (Fair Debt Buying Practices Act)* (form CIV-105) to update to update the statutory;
7. citation in the declaration of nonmilitary status on each form. This revision will
8. implement the changes enacted in Assembly Bill 3212, which amended Military and
9. Veterans Code section 400 et seq.
10. Revise form CR-132, item 4b, to update the reference to form MC-210 to form CR-105;
11. Revise form CR-133, item 2b, to update the references to form MC-210 to form CR-105;
12. Revise form CR-134, items 5a(3)(b), 5b(2)(b), and 5c(2)(b), to update the references to form MC-210 to form CR-105;
13. Revise form CR-141-INFO, items 13b and 13c, to update the references to form MC-210 to form CR-105;
14. Revise form CR-142, items 5b(2), 5c(2), and 5d(4), to update the references to form MC-210 to form CR-105;
15. Revise *Petition for Transfer Orders* (form GC-363) to add a box below the case number box in the form header to indicate the date, time, and place of the initial hearing on the petition;
16. Revise *Petition for Orders Accepting Transfer* (form GC-366) to add a box below the case number box in the form header to indicate the date, time, and place of the initial hearing on the petition; and
17. Revise *Proof of Service-Civil* (form POS-040), to correct the time frame in the Declaration of Messenger on page 2, to conform to the recently-amended time frame for leaving documents at a party's residence permitted in Code of Civil Procedure section 1011.

The text of the amended rules and the revised forms are attached at pages 4–50.

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 rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Policy implications
None.

Comments
These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered
None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 8.380, 8.384, 8.851, 8.866, 8.868, 8.917, and 8.919, at pages 4–6
2. Forms APP-013, CIV-100, CIV-105, CR-131-INFO, CR-132, CR-133, CR-134, CR-141-INFO, CR-142, GC-363, GC-366 and POS-040, at pages 7–50

Rules 8.380, 8.384, 8.851, 8.866, 8.868, 8.917, and 8.919 of the California Rules of Court would be adopted, effective January 1, 2020, to read:

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

(a) Required Judicial Council form

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form ~~MC-275~~ HC-001). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

(b)-Subdivision (b) ***

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

(a) Form and content of petition and memorandum

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form ~~MC-275~~ HC-001) but must contain the information requested in that form and must be verified. All petitions filed by attorneys, whether or not on form ~~MC-275~~ HC-001, must be either typewritten or produced on a computer, and must comply with this rule and rule 8.40(b)-(c) relating to document covers and rule 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form ~~MC-275~~ HC-001 must also comply with the remainder of rule 8.204(a)(b).

(a)(2)-Subdivision (b)(4) ***

Rule 8.851. Appointment of appellate counsel

(a)-(c) ***

Advisory Committee Comment

Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133) may be used to request that appellate counsel be appointed in a misdemeanor case. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show

indigency. These forms are available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Rule 8.866. Preparation of reporter's transcript

(a)-(f) ***

Advisory Committee Comment

Subdivision (a). If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) ***

Rule 8.868. Record when trial proceedings were officially electronically recorded

(a)-(f) ***

Advisory Committee Comment

Subdivision (d). If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Rule 8.917. Record when trial proceedings were officially electronically recorded

(a)-(f) ***

Advisory Committee Comment

Subdivision (d). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Rule 8.919. Preparation of reporter's transcript

(a)-(f) ***

Advisory Committee Comment

Subdivision (a). The appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form ~~MC-210~~ CR-105) to show indigency. This form is available at any courthouse or county law library or online at www.courts.ca.gov/forms.

Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii). ***

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:	
Plaintiff: Defendant:	
MEMORANDUM OF COSTS ON APPEAL	CASE NUMBER:

NOTE: You must file a proof of service of this document. For this purpose, Judicial Council proof of service forms are available. (See www.courts.ca.gov/forms.htm?filter=POS.) An appropriate form may be completed and filed to show proof of service.

Prevailing party *(name):*

claims from *(name):*

the following costs on appeal:

	TOTALS
1. Filing fees	1. $
2. Preparation of the original and copies of clerk's transcript or appendix	2. $
3. Preparation of reporter's transcript	3. $
4. Printing and copying of briefs	4. $
5. Production of additional evidence	5. $
6. Transmitting, filing, and serving of record, briefs, and other papers	6. $
7. Premium on any surety bond on appeal	7. $
8. Other expenses reasonably necessary to secure surety bond	8. $
9. Other: *(specify authority):*	9. $

TOTAL COSTS: $ _____

I am ☐ the party ☐ counsel for the party ☐ agent for the party who claims the costs listed above.
To the best of my knowledge, the items of cost are correct and were necessarily incurred in this case on appeal.

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
APP-013 [Rev. January 1, 2020]

Code of Civil Procedure, § 1034(b);
Cal. Rules of Court, rule 8.278
www.courts.ca.gov

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** **06/16/19** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR (Application) ☐ **Entry of Default** ☐ **Clerk's Judgment** ☐ **Court Judgment**	CASE NUMBER:

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

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

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

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

2. **Judgment to be entered.**

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

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

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

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

Date:

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

FOR COURT USE ONLY

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

Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California CIV-100
[Rev. January 1, 2020]

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

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

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

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

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

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

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

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

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

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

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

8. **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code sections 400 and 402(f).

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

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

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **06/16/19** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR (Application) ☐ **Entry of Default** ☐ **Judgment**	CASE NUMBER:

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

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

   _____

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

2. **Judgment to be entered.**

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

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

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

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

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

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

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

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

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

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

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

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

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

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

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

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

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY

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

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

Clerk, by _____, Deputy

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

   a. Assistant's name:

   b. Street address, city, and zip code:

   c. Telephone no.:

   d. County of registration:

   e. Registration no.:

   f. Expires on *(date):*

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

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

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

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

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

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

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

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

      (1) Mailed on *(date):*

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

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

9. **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code sections 400 and 402(f).

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

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

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

    c. Other *(specify):* $

    d. $

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

    f. ☐ Costs and disbursements are waived.

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

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

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:

(1) within 20 days after you file your notice of appeal, or, if it is later

(2) 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 CR-105), to show that you are indigent. You can get form CR-105 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 CR-105) to show that you are indigent. You can get form CR-105 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*)

- ***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.*

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.

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" 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 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 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 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.*

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-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

(1) Your Information

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

b. Appellant's contact information (required):
Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)
Mailing address *(if different)*: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)
Phone: _____ E-mail: _____

c. Appellant's lawyer in the trial court proceedings:
The lawyer filling out this form ☐ is ☐ is not representing the appellant in this appeal.
If a court-appointed lawyer on appeal is being requested, see item (4).
Name: _____ State Bar number: _____
Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)
Mailing address *(if different)*: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)
Phone: _____ E-mail: _____
Fax: _____

Trial Court Case Name: _____ Trial Court Case Number:

2 Judgment or Order You Are Appealing

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

a. ☐ The final judgment of conviction in this case (Pen. Code, § 1466(b)(1)).
   ☐ I am/My client is contesting only the conditions of the probation.

b. ☐ The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Pen. Code, § 1466(b)(1)).
   ☐ An order modifying the conditions of probation.
   ☐ Other *(describe the action you are appealing and give the date the trial court took the action):*
   _____

c. ☐ The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Pen. Code, § 1538.5(j)).

d. ☐ Other action *(describe the action you are appealing and give the date the trial court took the action):*
   _____
   _____

3 Record on Appeal

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

a. ☐ I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

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

4 Court-Appointed Lawyer

a. Do you/Does your client want to be represented by a court-appointed lawyer in this appeal? *(Answer yes or no.)*
   ☐ Yes. Complete and attach *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133).
   ☐ No.

b. Were you/Was your client represented by the public defender or other court-appointed lawyer in the trial court? *(Answer yes or no.)*
   ☐ Yes.
   ☐ No. If you answered yes to 4a, complete and attach *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105).

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

Date: _____

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

CR-133 Request for Court-Appointed Lawyer in Misdemeanor Appeal

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person appealing 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*.
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
  (1) your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments), or
  (2) you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____ Trial Court Case Number:

Information About Your Case

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? *(Check a or b.)*

a. ☐ Yes

b. ☐ No *(Complete and attach* Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense *(form CR-105) showing that you/your client cannot afford to hire a lawyer. You can get form CR-105 at any courthouse or county law library or online a*t www.courts.ca.gov/forms.*)*

3 Describe the punishment the trial court gave you/your client in this case *(check all that apply and fill in any required information):*

a. ☐ Jail time

b. ☐ A fine (including penalty and other assessments) *(fill in the amount of the fine)*: $ _____

c. ☐ Restitution *(fill in the amount of the restitution)*: $ _____

d. ☐ Probation *(fill in the amount of time on probation):* _____

e. ☐ Other punishment *(describe any other punishment that the trial court gave you/your client in this case):*

_____

_____

_____

4 *Describe any significant harm that you are/your client is likely to suffer because of this conviction:*

_____

_____

_____

_____

_____

Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

_____ ▶ _____

Type or print name *Signature of appellant or attorney*

CR-134 Notice Regarding Record on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

Name: _____

b. Appellant's contact information (required):

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

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

Phone: _____ E-mail: _____

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

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

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

Your Choices About the Record on Appeal

Stipulation for Limited Record

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

Record of Oral Proceedings

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

(4) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item (5); sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

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

(Write initials here): _____

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

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1), (2) or (3).)*

(1) ☐ Within 10 days of when I receive the court reporter's estimate of the cost of this transcript, I will file a certified transcript of all the proceedings required by rule 8.865 that complies with rule 8.144.

(2) ☐ I will pay the trial court clerk's office for the reporter's transcript myself within 10 days of when I receive the court reporter's estimate of the costs of this transcript. Alternatively, I will pay the reporter directly and file with the trial court a written waiver of deposit signed by the reporter. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(3) ☐ I am asking that the reporter's transcript be prepared at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a reporter's transcript at no cost to you.)*

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*

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

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a transcript at no cost to you.)*

5 *(continued)*

OR

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

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

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a copy of the official electronic recording at no cost to you.)*

OR

d. ☐ **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. *(Check and complete (1) or (2).)*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Misdemeanor) *(form CR-135) to prepare and file this proposed statement. You can get form CR-135 at any courthouse or county law library or online at* www.courts.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice. I understand that if I do not serve and file the proposed statement on time, and if I am represented by a court-appointed lawyer, the court may appoint a new lawyer. If I represent myself or hire a lawyer to represent me, and I do not serve and file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

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

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction 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 infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction 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 infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at *http://leginfo.legislature.ca.gov/faces/codes.xhtml.*) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction 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 or errors or misconduct by the lawyers 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 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.

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-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.*

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 an infraction 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 will need to hire a lawyer yourself 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.*

➔

If you are representing yourself, you must put your address, telephone number, fax number (if available), 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 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 an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction 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).

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

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal 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 this law at *http://leginfo.legislature.ca.gov/faces/codes.xhtml.*)

7 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 and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get form CR-142 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

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

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (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.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. 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 an infraction 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 to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a "stay" of the judgment. 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. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence 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.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of 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. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

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 proceedings must be prepared and sent to the appellate court 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 the 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 the 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.

13 What are the different forms of the record?

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

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

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

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

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court 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 8.916 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 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 (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 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 within 20 days after you file your notice of appeal. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed statement to the prosecuting attorney and any other party 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. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.
- 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 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 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 proposed statement that are 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 to 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 the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from official recording

When available: In some infraction 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 for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded 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.

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 these 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 that 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 the 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 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. 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 CR-105) to show that you are indigent. You can get form CR-105 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. 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 8.917.

Completion and delivery: Once you deposit the estimated cost of the transcript or 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. Reporter's transcript

When available: In some infraction 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 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 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 the reporter's transcript), you may be able to get a free transcript. 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 CR-105) to show that you are indigent. You can get form CR-105 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 8.919.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 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 both the reporter's transcript and clerk's transcript to the appellate division.

14 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 8.912 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.*)
- ***Exhibits submitted during trial:*** Exhibits, such as photographs or maps, 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 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 8.921 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.

15 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.

16 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 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction 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.*

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

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the respondent (the prosecuting agency) and any other party 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 at *www.courts.ca.gov/selfhelp-serving.htm.*

17 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."

18 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.

19 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 five 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.

20 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 that decision.

21 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 (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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 in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

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

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

Name: _____

b. Appellant's contact information (required):

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

c. Appellant's lawyer in the trial court proceedings:

The lawyer filling out this form ☐ is ☐ is not representing the appellant in this appeal.

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

Fax: _____

(2) Judgment or Order You Are Appealing

I am/My client is appealing *(check a, b, or c):*

a. ☐ the final judgment of conviction in the case (Pen. Code, § 1466(b)(1)).
The trial court issued (rendered) this judgment on *(fill in the date):* _____

b. ☐ an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Pen. Code, § 1466(b)(2)).
The trial court issued (rendered) this order on *(fill in the date):* _____

c. ☐ Other (describe the action you are appealing and indicate the date the trial court took the action):
_____
_____
_____
_____

Your Choices About the Record on Appeal

Stipulation for Limited Record

(3) ☐ The respondent and I/my client have agreed ("stipulated") under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. *(At the top of each page write "CR-142, item 3.")*

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.

(4) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item (5); sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item (5) below)*. I understand that if I elect (choose) to proceed with a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

(5) I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one—a, b, c, or d):*

a. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).)*

5 *(continued)*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Infraction) *(form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at* www.courts.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve the prosecuting attorney if the prosecuting attorney appeared in the case and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may proceed on the clerk's transcript only.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free transcript.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov /forms. *The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*

5 *(continued)*

OR

d. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule.*

Within 10 days of receiving the court reporter's estimate of the cost of preparing the reporter's transcript, I will *(check and complete one of the following)*:

(1) ☐ File with the trial court a certified transcript of all the proceedings required by rule 8.918.

(2) ☐ Pay for the transcript myself by depositing with the trial court an amount equal to the estimated cost of the transcript.

(3) ☐ Pay the reporter directly and file with the trial court a written waiver of the deposit that is signed by the reporter.

(4) ☐ Request a reporter's transcript at no cost. I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105). *(You can get form CR-105 at any courthouse or county law library or online at* www.courts.ca.gov/forms*. The court will review this form to decide if you are eligible for a reporter's transcript at no cost to you.)*

I understand that if I do not pay for this transcript and I am not eligible for a reporter's transcript at no cost, the reporter's transcript will not be prepared and provided to the appellate division.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE		CASE NUMBER:
PETITION FOR TRANSFER ORDERS (California Conservatorship Jurisdiction Act)		HEARING DATE AND TIME: DEPT.:

1. I, *(name):* ,
   (address):

   (telephone): *(e-mail):* ,
   the conservator of the ☐ person ☐ estate in California for the person identified in 2, request that the court order this proceeding transferred to *(name of state):* (the receiving state).

2. Conservatee's personal information
   Name:
   Residence address:

   (telephone): *(e-mail):*
   ☐ The conservatee is not developmentally disabled.
   ☐ The conservatee is not receiving involuntary mental health care or treatment.

3. For a conservatorship of the person:
   a. Conservatee's relationship to receiving state. Note: Establishment of the conservatee's residence outside California requires a prior court order. (See Prob. Code, § 2352(c) & (d)(2).)
      (1) ☐ The conservatee is physically present in the receiving state *(describe circumstances):*

      (2) ☐ The conservatee plans to move permanently to the receiving state on *(date):* .
      Conservatee's planned residence address in receiving state (if different from address in 2):

   b. I have made, or plan to make, the following arrangements for the conservatee's care in the receiving state *(describe):*

      ☐ Continued on attachment 3b. *(Attach a separate sheet of paper or form MC-025.)*

   c. I have arranged for the provision of the following services to the conservatee in the receiving state *(describe services):*

      ☐ Continued on attachment 3c. *(Attach a separate sheet of paper or form MC-025.)*

Form Approved for Optional Use
Judicial Council of California
GC-363 [Rev. January 1, 2020]

Probate Code, § 2001
www.courts.ca.gov

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

4. For a conservatorship of the estate:
   a. Conservatee's relationship to the receiving state:
      (1) ☐ The conservatee is physically present in or plans to move permanently to the receiving state. *(Give address in 3a.)*
      (2) ☐ The conservatee has the following connection(s) to the receiving state *(describe all connections):*
         (a) The following family members and other persons entitled to notice of the proceedings live in the receiving state *(name and address of each):*

         ☐ Continued on Attachment 4a(2)(a). *(Use a blank sheet of paper or form MC-025.)*
         (b) The conservatee has been present in the receiving state for a total of months from *(date first arrived):* to *(date last departed):* . During that time, the conservatee was absent from the receiving state for a total of months.
         (c) The conservatee holds a legal or beneficial interest in the following property located in the receiving state *(describe each piece of property and give street address of real property or location of personal property):*

         ☐ Continued on Attachment 4a(2)(c). *(Use a blank sheet of paper or form MC-025.)*
         (d) ☐ The conservatee has the following friends and social ties in the receiving state *(name and address of each):*

         ☐ Continued on Attachment 4a(2)(d). *(Use a blank sheet of paper or form MC-025.)*
         (e) ☐ The conservatee receives public benefits or services in or from the receiving state *(list each):*

         ☐ Continued on Attachment 4a(2)(e). *(Use a blank sheet of paper or form MC-025.)*
         (f) The conservatee has the following additional connections to the receiving state *(if a social security number or other account number is needed to document a connection, list only the last 4 digits (Cal. Rules of Court, rule 1.201(a).)):*
            ☐ Registered to vote in the receiving state
            ☐ Filed state tax return in receiving state *(year(s) filed):*
            ☐ Filed local tax return in receiving state *(year(s) filed):*
            ☐ Registered vehicle in receiving state *(description of vehicle):*

            ☐ Driver's license issued by receiving state
            ☐ Other ties *(describe each):*

         ☐ Continued on Attachment 4a(2)(f). *(Use a blank sheet of paper or form MC-025.)*
   b. The petitioner has made the following arrangements for management of the conservatee's property in the receiving state *(describe all arrangements):*

      ☐ Continued on Attachment 4b. *(Attach a separate sheet of paper or form MC-025.)*

(If you have been appointed conservator of both the person and estate for the person named in 2, complete both 3 and 4, above.)

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5. Objections *(complete a or b):*
   a. ☐ The petitioner is not aware of any objection to the proposed transfer.
   b. ☐ The petitioner knows of or anticipates objections to the proposed transfer.

6. The proposed transfer would be in the best interests of the conservatee for the following reasons *(give reasons):*

   ☐ Continued on Attachment 6. *(Use a blank sheet of paper or form MC-025.)*

7. The conservatorship is likely to be accepted by the court in the receiving state because *(give reasons):*

   ☐ Continued on Attachment 7. *(Use a blank sheet of paper or form MC-025.)*

8. Status of reports, accountings, or other documents, if any, required to terminate the California conservatorship:

   ☐ Includes documentation of payment of all fees and costs, including attorney's fees.
   ☐ Continued on Attachment 8. *(Use a blank sheet of paper or form MC-025.)*

Date filed:
If not yet filed, date expected:

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY)

(All petitioners must also sign this form.) (Prob. Code, § 1020.)

I declare under penalty of perjury under the laws of the State of California that the information stated on this form and any attachments is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF *(name):* CONSERVATEE		CASE NUMBER:
PETITION FOR ORDERS ACCEPTING TRANSFER (California Conservatorship Jurisdiction Act)		HEARING DATE AND TIME: DEPT.:

1. Protected person's (e.g., conservatee's or ward's) personal information:

   Name:
   Residence Address:

   Telephone: E-mail:

2. I, *(name):*
   was appointed the conservator or guardian for the person named in 1 by a court of record of the state of *(specify):* (the transferring state) on *(date):* . My appointment remains in effect.

3. ☐ The California Conservatorship Jurisdiction Act (CCJA; Prob. Code, §§ 1981–2033), applies to this proceeding because the protected person:
   - Is 18 years of age or older;
   - Is NOT involuntarily committed to a mental health facility or receiving any other involuntary mental health care or treatment; and
   - Has NOT been been diagnosed or assessed with a developmental disability.

4. ☐ A certified copy of the provisional order of transfer issued by a court of record in the transferring state is attached to this form.

   The existing protective proceeding is best described under California law as *(check all that apply):*

   a. ☐ A conservatorship of the person *(The court order gives me powers and duties to manage the protected person's needs for food, clothing, shelter, or health care.)*

   b. ☐ A conservatorship of the estate *(The court order gives me powers and duties to manage the protected person's finances and property.)*

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5. Factors relevant to determining the jurisdiction of the California court:

a. ☐ The conservatee has been physically present in California since *(date):* and remains present in California.

b. ☐ The conservatee was physically present in California from *(date):* to *(date):* , ending within six months of the date this petition is filed.

c. ☐ The conservatee has the following connections to California *(list all that apply):*

(1) ☐ The following relatives and other persons required to receive notice of the proceeding reside in California:

☐ Continued on Attachment 5c(1). *(Use a blank sheet of paper or form MC-025.)*

(2) ☐ The conservatee was physically present in California during the following periods:

From *(date):* to *(date):*
From *(date):* to *(date):*
From *(date):* to *(date):*
From *(date):* to *(date):*

☐ Continued on Attachment 5c(2). *(Use a blank sheet of paper or form MC-025.)*

(3) ☐ The conservatee will move permanently to California and reside at the following address *(provide if known):*

(4) ☐ The conservatee holds a legal or beneficial interest in the following property located in California *(describe each piece of property; give the street address of real property or the location of personal property):*

☐ Additional property is described on Attachment 5c(4). *(Use a blank sheet of paper or form MC-025.)*

(A) Estimated value of real property in California: $
(B) Estimated value of personal property in California: $
(C) Annual gross income from
(i) Real property: $
(ii) Personal property: $
(iii) Pensions: $
(iv) Wages: $
(v) Public assistance benefits: $
(vi) Other: $
Subtotal of (C): $
(D) **Total** of (A), (B), and (C): $

(5) ☐ The conservatee has the following other ties to California *(for example, voter registration, driver's license, tax filing):*

☐ Continued on Attachment 5c(5). *(Use a blank sheet of paper or form MC-025.)*

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

6. I request that the court:

   a. Accept transfer of this proceeding and recognize the transferring state's conservatorship order.

   b. (1) ☐ Appoint me as conservator of the ☐ person ☐ estate under California law for the person named in 1, or
   (2) ☐ Appoint *(name):*
   (mailing address):

   (telephone number): *(e-mail):*
   (relationship to conservatee): , who is eligible for appointment under California law,
   as conservator of the ☐ person ☐ estate for the person named in 1.

   c. (1) ☐ Adopt the transferring state's conservatorship order, which needs no modification to conform to California law.
   (2) ☐ Issue a new conservatorship order, as proposed on the attached *Order Appointing Probate Conservator* (form GC-340), which modifies the terms of the conservatorship as follows to conform to California law:
   (A) Powers modified:

   (B) Duties modified:

   (C) Bond modified:

   (D) Other information needed:

   ☐ Additional modifications are included on Attachment 6c(2). *(Attach a blank sheet of paper or form MC-025.)*

   d. Issue *Letters of Conservatorship* (form GC-350) on the appointee's qualification.

7. ☐ A *Petition for Appointment of Temporary Conservator* (form GC-111) is filed with this petition.

8. ☐ The conservatee ☐ has ☐ has not been diagnosed with a major neurocognitive disorder (major NCD, such as dementia).

   a. ☐ A completed *Petition for Exclusive Authority to Give Consent for Medical Treatment* (form GC-380), with *Attachment Requesting Special Orders Regarding a Major Neurocognitive Disorder* (form GC-313), is filed with this petition.

   b. ☐ I intend to petition the court for major NCD/dementia powers under section 2356.5 of the Probate Code as soon as the court issues a final order accepting transfer of this conservatorship.

I declare under penalty of perjury under the laws of the State of California that the information stated on this form and any attachments is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR 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** **06-19-19** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
PROOF OF SERVICE—CIVIL **Check method of service *(only one):*** ☐ By Personal Service ☐ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	DEPARTMENT:

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age **and not a party to this action**.
2. My residence or business address is:

3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*

4. On *(date):* I served the following **documents** *(specify):*

   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served:
   b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
      Business or residential address where person was served:

   c. ☐ *(Complete if service was by fax.)*
      Fax number where person was served:

   ☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

CASE NAME:	CASE NUMBER:

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

   (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

   (2) ☐ placed the envelope for collection and mailing, 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.

   I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):*

   c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

   d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

   e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents**.

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at *www.courts.ca.gov/forms.htm.*

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.