

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-39

Title	Action Requested
Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form DV-210; approve form DV-205-INFO; revise form DV-200-INFO	January 1, 2020
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Frances Ho, 415-865-7662 frances.ho@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends adopting one form, approving one information sheet, and revising one information sheet to implement the provisions in Assembly Bill 2694 (Stats. 2018, ch. 219). The bill allows for alternative service for domestic violence restraining order requests when, after diligent efforts, personal service has not been accomplished and there is reason to believe that the person to be served is evading service.

Background

AB 2694 added section 6340(a)(2) to the Family Code, effective January 1, 2019. Under the new law, a person seeking a domestic violence restraining order may request to serve the other party by a method other than personal service (i.e., alternative service) if diligent efforts to serve the order by personal service have failed and there is reason to believe that the person to be restrained is evading service. The court, in its discretion, may permit alternative service that is “designed to give reasonable notice of the action to the respondent,” such as substituted service or publication. (Fam. Code, § 6340(a)(2)(A).)

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 These proposals are circulated for comment purposes only.

The Proposal

The committee recommends adopting one form, approving one form, and revising one form to implement AB 2694.¹

Adopt form DV-210, *Summons (Domestic Violence Restraining Order)*

This form would serve as the summons that would be used when the court permits a method of alternative service that requires service of a summons. The goal of the summons is to stress to the person to be restrained the importance of acting on a request for restraining order either by going to the scheduled court hearing or going to the courthouse to find out more information about the request for restraining order. To this end, the summons includes:

- The name of the person requesting the restraining order;
- Information on what can happen if the person to be restrained does NOT go to the court hearing;
- The statement, “Having a restraining order against you may affect your life, including preventing you from having guns and ammunition”;
- Where to go to see the request for restraining order;
- Where to go to get help; and
- When and where to go for the court hearing.

Code of Civil Procedure section 412.20 requires that a summons contain specific elements, including what would happen if the “defendant” (in this case the person to be restrained) does nothing in an action brought against them. No other form in the Domestic Violence Prevention (DV) series could be used as a summons and comply with the code requirements. In addition, other forms in the DV series contain more information than what is needed for a summons, as defined by the code, such as the address for the person requesting the restraining order. Including additional information raises potential safety issues for the person seeking the restraining order if, for example, the information were widely distributed, such as posted in a courthouse or published in a newspaper.

Form DV-210 is designed to comply with section 412.20 by giving the person to be restrained the necessary information to act, should they choose to, while excluding sensitive information that is not required.

Approve new INFO sheet

New form DV-205-INFO, *What if the Person I Want Protection From Is Avoiding (Evading) Service?*, would give the moving party in a domestic violence restraining order case information on the availability of alternative service, including:

- The type of service generally required for the court to issue a restraining order after hearing;

¹ The committee also recommends revisions to forms DV-115 and DV-116, which are provided in a separate proposal called, “Protective Orders: Revisions to Continuance Forms.”

- The minimum information the litigant needs to provide the court to be eligible for an alternative method of service; and
- Some examples of alternative methods of service.

Revise form DV-200-INFO

To comply with AB 2694, this information sheet needs to be revised to include alternative service as an option. Currently, the form states that personal service is required for all cases. The revised version would state that, although in most cases personal service would be required, in some cases alternative service may be allowed.

In addition to changing the service requirement, the committee also recommends:

- Including graphics to represent key concepts, like personal service and law enforcement;
- Using plain language;
- Reorganizing content so that litigants understand the steps involved in providing a proof of service to the court;
- Including an advisement on possible safety issues that could be present at the time of service; and
- Renaming the section “How does the server ‘serve’ the legal papers?” to “Instructions for Server.”

The revisions are recommended to improve the usability of the form.

Alternatives Considered

The committee considered not creating a summons form but rejected this because no current form complies with Code of Civil Procedure section 412.20 that could be used in domestic violence restraining order cases.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, the committee also anticipates that the proposal will result in cost savings by creating a new summons form that would otherwise have to be created by local courts to use if publication or posting is ordered. The new information sheet (form DV-205-INFO) could also create cost savings by providing self-help centers and court staff with a tool to assist self-represented litigants.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the forms easy for users, especially self-represented litigants, to understand?
- Do you have any suggestions for improving their usability or readability?
- Should other information be included on the new forms (DV-205-INFO and DV-210)?

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

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

Attachments and Links

1. Forms DV-210, DV-205-INFO, and DV-200-INFO, at pages 5–11
2. Assem. Bill 2694,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2694

Complete items ①, and ② only. Llene los puntos ① y ② solamente.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT 3.20.19

**NOT APPROVED
BY THE JUDICIAL
COUNCIL**

Superior Court of California, County of
Corte Superior de California, Condado de

Case Number:
Número de caso:

① **Person asking for protection:**
La persona que solicita protección:

② **NOTICE TO** (name of person to be restrained):
AVISO A (nombre de la persona a ser restringida):

- The person in ① is asking for a Domestic Violence Restraining Order against you.

La persona en ① está pidiendo una orden de restricción de violencia en el hogar contra usted. Lea la página 2 para más información.

- If you do NOT want a restraining order against you, you must go to your court hearing. If you do not go to your court hearing, the judge can make the orders the person in ① is asking for without you there. See ③ for when your court hearing is.
- Having a restraining order against you may impact your life, including preventing you from having guns and ammunition. If you have a child with the person in ①, the court could make orders that limit your time with your child.
- To find out what the person in ① is asking the judge to order and if there is a temporary restraining order against you right now, go to the courthouse and ask to see your case file. The request for restraining order will be on form DV-100, *Request for Domestic Violence Restraining Order*. Your case number is listed above.
- Free legal information is available at your local court's self-help center. Go to www.courts.ca.gov/selfhelp to find your local center.
- You are not required to have a lawyer, but you may want legal advice before your court hearing. For help finding a lawyer, you can visit www.lawhelpca.org or contact your local bar association. [Spanish translation will be on page 2]

— The court will complete the rest of this form —

— El tribunal llenará el resto de este formulario —

③ **Your Court Hearing**
Su Audiencia

Name and address of court, if different from above:

Date *Fecha*: _____

Nombre y dirección de la corte, si no es la misma de arriba:

Time *Hora*: _____

Dept. *Depto.*: _____

Room *Sala*: _____

[seal]

[sello]

Date (*Fecha*): _____ Clerk, by (*Secretario, por*): _____
Deputy (*Asistente*)

Citación (Orden de restricción de violencia en el hogar)

[Content translated into Spanish to be added here]

Why do I have to serve the other party?

Before a judge can grant a domestic violence restraining order (that can last up to five years), the person you want a restraining order against must know about your request and have a chance to go to court to explain their side. In most cases, the judge will require that you have someone personally deliver the papers to the person you want restrained—called personal service. See form [DV-200-INFO](#), *What Is "Proof of Personal Service,"* for more information.



Am I eligible to serve in another way?

In some cases, a judge may allow you to give (serve) the restraining order paperwork another way—called alternative service. To be eligible for alternative service, you must show the judge at least two things:

<p>1. You have tried many times to have someone personally serve the restrained person.</p>	<p>Some examples of things you can try:</p> <ul style="list-style-type: none"> • Serve the restrained person at home, the workplace, or somewhere the restrained party goes a lot, • Search online for whereabouts, • Check with the restrained person’s family and friends. <p>⚠ Make sure any attempts to find the restrained person are done safely.</p> <p>👮 If you have an address for the restrained person, you can ask the sheriff or marshal to serve the papers, and they will do it for free.</p>
<p>2. You believe the restrained person is avoiding (evading) service.</p>	<p>Be ready to explain why you think the restrained person is avoiding service. If you have people who will help you prove this to the judge, bring them to your court hearing or have them write a statement that describes what they witnessed. Form MC-030 may be used for this purpose.</p>

How do I make a request for alternative service?

If you believe you are eligible for alternative service, you can complete [form DV-115, Request to Continue Hearing](#), to make this request. You will have to go to your court hearing so the judge can make a decision on your request. Alternative service may involve third parties seeing your name, the fact that you want a restraining order against the other party, and possibly your statements regarding the abuse. You may want to talk to an advocate about your safety and privacy concerns before you consider this request. For safety tips or other help, call the [National Domestic Violence Hotline](#) at **1-800-799-7233; TDD: 1-800-787-3224**.



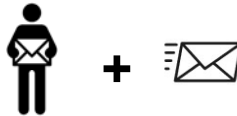
What are some examples of alternative service?

Here are some examples of what a judge can order if the judge allows alternative service in your case. A judge could order you to serve the restrained person in more than one way.

Leave a copy and mail a copy to the restrained person's home or mailing address
(known as "substituted service")

If you have the restrained person's home or mailing address (cannot be a PO box), this type of service requires your server (an adult not protected by the restraining order) to follow these steps:

1. Leave paperwork with someone 18 years or older (adult) who lives there;
2. Get the name of the adult who got the paperwork, and tell the adult that the paperwork is for a request for a restraining order against the restrained person;
3. Mail the paperwork to the restrained person's home or mailing address; and
4. Completely fill out [form POS-010](#), *Proof of Service of Summons*; and
5. File form POS-010 with the court or give the completed form to the person asking for the restraining order so they can file it with the court.

Leave a copy and mail a copy to the restrained person's workplace
(known as "substituted service")

If you know where the restrained person works, this type of service requires your server (an adult not protected by the restraining order) to follow these steps:

1. Give paperwork to someone who seems to be in charge at the restrained person's workplace;
2. Get the name of the person who got the paperwork;
3. Mail the paperwork to the restrained person at the address of the workplace;
4. Completely fill out [form POS-010](#), *Proof of Service of Summons*; and
5. File form POS-010 with the court or give the completed form to the person asking for the restraining order so they can file it with the court.

Publish in a Newspaper

You would have to pay a newspaper to run a copy of form DV-210, *Summons (Domestic Violence Restraining Order)*, at least once a week for at least four weeks in a row. The judge would approve a newspaper that would have the best chances of the restrained person seeing it. To make this request, complete [form FL-980](#), *Application for Order for Publication or Posting*, and items 1 and 2 on form DV-210, and file them with the court. If the judge approves your request, follow the orders made by the judge. Usually these orders are made on [form FL-982](#), *Order for Publication or Posting*. After the newspaper publishes form DV-210, make sure you get a signed statement from the newspaper that includes a copy of what was published in the paper and when it was published. This statement is usually called, "Proof of Publication." After you receive this statement, take it to the courthouse to file in your case.

Post in courthouse

If you do not have money to pay a newspaper to publish, you could ask the judge for permission to post a copy of form DV-210, *Summons (Domestic Violence Restraining Order)*, in a courthouse. To be eligible, you have to qualify for a fee waiver. If you are asking for permission to post, you must complete [form FW-001, Request to Waive Court Fees](#), and take it to the courthouse to file in your case. If the judge allows you to serve the restrained person this way, you must find a server (an adult not protected by the restraining order) to post form DV-210 for you in the location approved by the judge. After it is posted, have your server completely fill out [form FL-985, Proof of Service by Posting](#). Take form FL-985 to the courthouse to file in your case.

May I serve by e-mail or electronically?

To serve someone electronically, like by e-mail or text message, the person you are serving has to agree to being served electronically. In your situation, if the person is avoiding service, it is unlikely that they will agree to being served electronically. The judge could tell you to send your paperwork by e-mail or electronically to the restrained person as a way to give the restrained person notice, but the judge would also tell you to serve the restrained person in another way, like one of the examples listed above.

What if I already have a domestic violence restraining order?

If a judge has already granted you a domestic violence restraining order (signed form DV-130), you must follow the orders for service on form DV-130. It is important to follow the orders for service because this is how the restrained person will find out about the restraining orders. Once you file proof that the restrained person was served, law enforcement and the court will have proof that the restrained person knows about the orders. If you have questions on what the judge ordered in your case, see below for where to get legal help.

Find legal help

Free legal information is available in every county at a court [self-help center](#). Staff can provide you with your legal options but will not tell you what you should do in your case and will not provide you with legal representation. To find out where your local self-help center is, go to www.courts.ca.gov/selfhelp. For legal advice, you can go to www.lawhelpca.org to search for free or low-cost legal services or contact your local bar association.

Find other help

For safety tips or other help, call the [National Domestic Violence Hotline: 1-800-799-7233; TDD: 1-800-787-3224](#). It's free and private. They can help you in more than 100 languages.

What is "service"?

Service is the act of giving your legal papers to the other party in the case. There are different ways to serve the other party—in person, by mail, and others.

Why do I have to get the orders served?

Before a judge can grant a domestic violence restraining order (that can last up to five years), the person you want a restraining order against must know what orders you are asking for and why you are asking for the orders. Also, if a restraining order is in place, the police cannot arrest the restrained person for violating the restraining order until the restrained person is served with the order.

What is "personal service"?

Personal service is when someone personally delivers your court papers to the other party.

In most cases, these forms must be served in-person:

- DV-109 *Notice of Court Hearing*,
- DV-100 *Request for Domestic Violence Restraining Order*, and
- DV-110 *Temporary Restraining Order*.



Who can serve?

Any adult who is not protected by the restraining order can serve your papers. For example, you cannot serve your restraining order

! Some situations may be dangerous. Think about people's safety when deciding who you want to serve your papers.

⚖️ A sheriff or marshal will serve your restraining order for free. A "registered process server" is a business you pay to deliver papers. To hire a process server, look for "process server" on the internet or in the yellow pages.

Here are the steps:

1. Choose a server	2. Have server give your papers to other party	3. File proof with the court
<p>Once you have chosen someone, give them all the papers that need to be served (see form DV-109 for all the forms that need to be served). Let the server know the deadline to serve the papers. In most cases, service has to happen at least five days before your court hearing. Look on the next page for directions on how to figure out your deadline.</p>	<p>Instructions for the server are on the next page. Give your server a copy of the restrained person's picture, if you have one.</p>	<p>The court needs proof that service happened and that it was done correctly. If the server was successful, have the server fully complete and sign form DV-200 (Proof of Personal Service). Note: the person you want restrained does not sign anything. Take form DV-200 to the court to file in your case. It is best to do so as soon as possible. This information will also automatically go into a restraining order database that police have access to.</p>
<p>⚖️ If you want the sheriff or marshal to serve, ask court staff where to take your papers.</p>		<p>⚖️ If the sheriff or marshal served the papers they may use another form for proof. Make sure a copy is filed with the court and that you get a copy.</p>



When is the deadline to serve the papers?

It depends. To know the exact date, you have to look at two things on [form DV-109](#):

First, look at the hearing date on page 1.

Next, look at the number of days written in item **6** on page 2.

3 **Notice of Court Hearing**
A court hearing is scheduled on

Hearing Date	Date: _____
	Dept.: _____

6 **Service of Documents by the Person**
At least five or ___ days before th

Look at a calendar. Subtract the number of days in item **6** from the hearing date. That's the final date to have the orders served. It's always OK to serve earlier than that date.

If nothing is written in item **6**, you must have the papers served at least five days before the hearing.

What happens if I cannot get the papers served before the hearing date?

You will need to ask the court to reschedule (continue) your court hearing. Fill out and file [form DV-115](#), *Request to Continue Hearing*, and [form DV-116](#), *Order on Request to Continue Hearing*. These forms ask the judge for a new hearing date and to make any temporary orders last until the end of the new hearing. Ask the clerk for the forms, or go to www.courts.ca.gov.

If the judge gives you a new court date, the person you want restrained will have to be served with form DV-116, form DV-115 and the original papers you filed. You should attach a copy of [form DV-115](#) and [DV-116](#) to a copy of your original paperwork. That way, the police will know your orders are still in effect. For more information on getting a new hearing date, read [form DV-115-INFO](#), *How to Ask for a New Hearing Date*.

What if the other person is avoiding service?

If you've tried many times to serve the other party and you can show the judge that the other party is avoiding (evading) service, you may ask the court to give you permission to serve another way. If you want to make this request, at your first hearing be prepared to give the judge details about attempts to serve the other party. The judge may require a written statement for this. Read form DV-205-INFO, *What if the Person I Want Protection From is Avoiding (Evading) Service?*, for more information.

Instructions for Server

- Before you serve the forms, note which forms you have (name of form/form number). See [form DV-200](#), *Proof of Personal Service*, for a list of forms.
- Find the person you need to serve. Make sure you are serving the right person by asking the person's name.
- Give the person the papers.
- If the person refuses to take the papers put them on the ground or somewhere next to the person. The person doesn't have to touch or sign for the papers. It is okay if they tear them up.
- Fill out form DV-200, completely, and sign.
- File form DV-200 with the court or give form DV-200 to the person who is asking for the restraining order so it can be filed.