

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

W17-06

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**Title**

Family Law: Request to Continue Hearing and Declaration Regarding Notice of Request for Temporary Emergency Orders

**Action Requested**

Review and submit comments by February 14, 2017

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 5.94; revise form FL-303; revoke form FL-306; adopt forms FL-306 and FL-307

**Proposed Effective Date**

September 1, 2017

**Contact**

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**Proposed by**

Family and Juvenile Law Advisory  
Committee  
Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising the form used to ask for an order to continue the hearing on a *Request for Order* (form FL-300) by expanding its use beyond cases in which temporary emergency (ex parte) orders had been previously issued. The committee also proposes revising the form used to show compliance with the notice and service requirements when requesting a temporary emergency (ex parte) order by including a new space for the date, time, and location of the proposed emergency hearing or submission of documents. The proposed changes would respond to specific suggestions from court professionals and help increase efficiencies in the way courts process requests to continue hearings and requests for temporary emergency orders.

### The Proposal

#### ***Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders (form FL-303)***

FL-303 is an optional form that can be used by a party to demonstrate compliance with the notice requirements of rule 5.165 of the California Rules of Court when requesting temporary emergency (ex parte) orders. The Judicial Council approved the form, effective July 1, 2016, to

*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 These proposals are circulated for comment purposes only.*

help fill a need for a standard form that can be accepted for filing in family courts across the state.

Following publication, family law facilitators noted that the form was deficient in one respect: for situations in which the party was requesting waiver of the ex parte notice requirements, the form does not 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, without a hearing. With no prompt on the form for a party to insert either date, the court clerk is unable to set the matter on the court’s calendar.

To address this issue, the committee proposes adding a space on the first page for the person completing the form to indicate the type of proceeding requested and specify the date, time, and location of the proposed emergency hearing or submission of documents. Former item 2.a.(2), which previously addressed notice of the new hearing date in certain situations would be deleted and the remaining items would be renumbered accordingly. The committee also proposes making other non-substantive, clarifying changes, such as adding headings to some of the items.

***Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders (form FL-306)***

FL-306 is a mandatory form used by a party to ask the court to continue a hearing on a *Request for Order* (form FL-300) and extend the temporary emergency (ex parte) orders granted by the court. The form also includes the court order on the request. The most recent changes to the form were made to comply with the amendments to Family Code section 245.<sup>1</sup>

Effective July 1, 2016, the form’s title was changed 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.

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<sup>1</sup> Family Code section 245 provides:

“(a) The respondent shall be entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition.

(b) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(c) If the court grants a continuance, any temporary restraining order that has been issued shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(d) If the court grants a continuance, the extended temporary restraining order shall state on its face the new date of expiration of the order.

(e) A fee shall not be charged for the extension of the temporary restraining order.”

This change has had unintended consequences. For example, court professionals noted that form FL-306 previously could be, and frequently was, used in parentage cases by the Department of Child Support Services to ask for the reissuance of an order to show cause for a party to seek work, an order to show cause regarding contempt, an order for appearance and examination, and other matters. However, the most recent revisions to form FL-306 no longer support these particular uses.

In addition, many courts reported that they relied on form FL-306 to continue a hearing on a *Request for Order* that did not include temporary emergency (ex parte) orders. Although the form was not specifically intended for that purpose, courts have reported that they no longer have a form to note the information for the continued hearing. As a result, court clerks in some counties have to take additional time to alter form FL-306. In other counties, in the absence of a form to continue a hearing on a request for order to effect service on the other party before the hearing, parties are required to refile the *Request for Order* (form FL-300) or file an amended form FL-300. In either case, additional, duplicative papers are added to the court file. The party is also required to pay an additional filing fee for the matter to be continued to a new date.

In response, the committee proposes revoking current form FL-306 and replacing it with two new forms—an application and an order. The title of new form FL-306 would be “Request to Continue Hearing” The content of new form FL-306 would be expanded to cover actions filed by the Department of Child Support Services in parentage cases and to allow a party to use the form to ask the court to continue a hearing on a *Request for Order* (form FL-300), order to show cause, or other moving papers without temporary emergency orders to allow time for service before the hearing.

The new form for the order, form FL-307, would be titled “Order on Request to Continue Hearing” and would cover orders on continuances in all the types of proceedings covered by new form FL-306.

Having a separate form for each function would:

- Make it easier for the party to complete the forms;
- Allow a party to more easily see and understand the orders on the request because they would be located on the first page instead of the back of an application;
- Harmonize the process with that used to continue hearings in other types of civil cases, including civil harassment, elder abuse, domestic violence, and workplace violence (for example, to continue a hearing in which temporary restraining orders have been issued, a party must complete a *Request to Continue Hearing* (form DV-115) and the order is then made using *Order on Request to Continue Hearing* (form DV-116)); and

- Reflect the policy of reducing multiuse forms to improve the processing of forms in the courts' case management systems.

**Rule 5.94. Order shortening time; other filing requirements; request to continue hearing and extend temporary emergency (ex parte) orders**

In addition to the above form changes, the committee proposes amending rule 5.94. The title of the rule would be changed to “Order shortening time; other filing requirements; request to continue hearing.” The content of the rule would also be amended to generally to reflect the new forms FL-306 and FL-307.

**Alternatives Considered**

The committee considered not making the changes, but concluded that the changes to the forms will likely have a beneficial impact on litigants and court professionals alike. The committee also considered when to propose the changes to forms FL-303 and FL-306. For example, consideration was given about any potential legislation that would require other revisions to the forms in the near future. Given the interest in increasing efficiency for the courts, the committee, having found no relevant legislation, decided to submit this proposal for the winter 2017 public comment cycle for an effective date of September 1, 2017.

**Implementation Requirements, Costs, and Operational Impacts**

The committee anticipates that this proposal will result in some costs to the courts to revise forms and train court staff about the changes to the forms included in this proposal. However, the committee believes that once implemented, the changes to the rule and forms will save a significant amount of time for court clerks, self-help staff, self-represented litigants, and attorneys. Further, the committee believes that these savings will more than offset the initial investment of time.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments about the proposed changes to forms FL-306 and FL-307 as follows:

Family Code section 245 replaced the term “reissue” with “extend” in relation to temporary emergency orders included in a request to continue a hearing. Although the statute does not apply to requests to continue a hearing which do not include previously granted temporary emergency orders, the draft changes to forms FL-306 and FL-307 in the proposal apply the same terminology to that situation.

Instead of including entries on form FL-306 for the party to specifically ask the court to “reissue” a *Request for Order* (form FL-300) or an order to show cause when no temporary emergency orders were issued, the party would simply ask that the court continue the hearing. The court’s order would then be reflected in the *Order on Request to Continue Hearing* (form FL-307) and served on the other party. Please provide comments about this proposed change.

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 are the implementation requirements for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?
- Is the information provided in plain language such that it will be accessible to a broad range of litigants, including self-represented litigants?
- What would the impact of this change be on low- and moderate-income litigants?

### Attachments

1. Cal. Rules of Court, rule 5.94, at pages 6–8
2. Forms FL-303, FL-306, and FL-307, at pages 9–13

Rules 5.94 of the California Rules of Court would be amended, effective September 1, 2017, to read:

1 **Rule 5.94. Order shortening time; other filing requirements; request to continue**  
2 **hearing and ~~extend temporary emergency (ex parte) orders~~**

3  
4 (a)–(d) \* \* \*

5  
6 (e) **Failure to timely serve request for order and ~~temporary emergency (ex parte)~~**  
7 **orders**

8  
9 The *Request for Order* (form FL-300) or other moving papers such as an order to  
10 show cause, including any and temporary emergency (ex parte) orders (form FL-  
11 305) granted, will expire on the date and time of the scheduled hearing if the  
12 requesting party fails to:

13  
14 (1) Have the other party timely served before the hearing with the *Request for*  
15 *Order* (form FL-300) or other moving papers, such as an order to show  
16 cause; supporting documents; and any orders issued on *Temporary*  
17 *Emergency (Ex Parte) Orders* (form FL-305) temporary emergency (ex  
18 parte) orders granted; or

19  
20 (2) Obtain a court order to continue the hearing.

21  
22 (f) **Procedures to request continued hearing date and ~~extension of temporary~~**  
23 **emergency (ex parte) orders**

24  
25 (1) If a *Request for Order* (form FL-300), order to show cause, or other moving  
26 papers that includes temporary emergency orders are not timely served on the  
27 other party before the date of the hearing, and the party ~~granted the temporary~~  
28 ~~emergency (ex parte) orders~~ wishes to proceed with the request, he or she  
29 must ask the court to continue the hearing date. ~~On a showing of good cause,~~  
30 ~~or on its own motion,~~ The court may:

31  
32 (A) May continue the hearing on a showing of good cause or on its own  
33 motion, and extend the expiration date of the temporary emergency  
34 orders until the end of the continued hearing or to another date ordered  
35 by the court.

36  
37 (B) May modify the or terminate any temporary emergency (ex parte)  
38 orders granted as part of the *Request for Order* or order to show cause.

39  
40 (C) By granting a continuance, must extend the expiration date of any  
41 Terminate the temporary emergency (ex parte) orders until the end of  
42 the continued hearing or to another date.

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- (2) The party served with a *Request for Order* (form FL-300), order to show cause, or other moving papers that include temporary emergency (ex parte) orders:
  - (A) Is entitled to one continuance as a matter of course for a reasonable period of time to respond ~~and, thereafter, to a continuance based on a showing of good cause.~~ 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) ~~Must file and serve a *Responsive Declaration to Request for Order* (form FL-320) as required by the court order.~~ May use *Request to Continue Hearing* (form FL-306) to ask the court to continue the hearing.
  - (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 the court or described in *Order on Request to Continue Hearing* (form FL-307).
- (3) 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 and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders*~~ *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 originally set on the *Request for Order, order to show cause, or other moving papers*.
    - (ii) The party may present the form to the court ~~at~~ on the hearing date ~~of originally set on the *Request for Order* matter.~~
    - (iii) The party who makes an oral request to the court ~~on~~ at the ~~date~~ time of the hearing is also required to complete and submit form FL-306 if the court grants the request to continue the hearing.
  - (B) ~~After the court signs and files form FL-306, a filed copy must be served on the other party, unless the court orders otherwise. If the continuance is granted:~~ Along with form FL-306, the party asking for the





PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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(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.** 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 an immediate (*identify the exceptional circumstances*):

- (1)  danger or irreparable harm to myself (or my client) or to the children in the case
- (2)  risk that the children in the case will be removed from the state of California
- (3)  loss or damage to property subject to disposition in the case
- (4)  Other exceptional circumstances (*specify*):

Facts in support of the request to waive notice (*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**

a. An unfiled copy of *Request for Order* (form FL-300) for temporary emergency orders, *Temporary Emergency (Ex Parte) Orders* (form FL-305), and related documents were served on

- Petitioner     Petitioner's Attorney     Other Parent/Party     Other Parent/Party's Attorney
- Respondent     Respondent's Attorney     Child's Attorney
- Other(*specify*):

b. Method of service:

- personal service on (*date*): \_\_\_\_\_ at (*location*): \_\_\_\_\_, California; at  a.m.  p.m.
- fax on (*date*): \_\_\_\_\_ fax no.: \_\_\_\_\_ at  a.m.  p.m.
- Overnight mail or other overnight carrier

c.  **Documents were not served on the opposing party** due to the following exceptional circumstances (*specify facts in support of the request to waive service of the documents*):  [Attachment 4c](#)

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b>  <b>NOT ADOPTED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
<b>REQUEST TO CONTINUE HEARING</b> <input type="checkbox"/> Extend Temporary Emergency (Ex Parte) Orders <input type="checkbox"/> Other (specify):	CASE NUMBER:

1. Name of person seeking a continuance (specify):
2. I ask that the court continue the hearing on the
  - a.  Request for Order
  - b.  Order to Show Cause re  Contempt  Seek Work
  - c.  Other (specify):  
filed on (date):
3. The hearing is currently set for (date):
4. I ask that the hearing be continued because (check all boxes that apply)
  - a.  the papers could not be served as required before the hearing date.
  - b.  the court ordered that we meet with a child custody mediator or child custody recommending counselor.
  - c.  I am entitled to one continuance for a reasonable period to respond to the request for temporary emergency orders.
  - d.  Other good cause as stated  below  [on Attachment 4\(d\)](#)
5. The request to continue  includes  does not include temporary emergency (ex parte) orders previously issued.  
*Notice: If the court grants the continuance, 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.*

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



PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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**8. Changes to temporary emergency (ex parte) orders**

- a.  No temporary emergency (ex parte) orders were changed.
- b.  The temporary emergency (ex parte) orders are MODIFIED as of this date. The new orders are stated in the attached
  - (1)  *Request for Order* (form FL-300)
  - (2)  *Temporary Emergency (Ex Parte) Orders* (form FL-305)
  - (3)  *Order to Show Cause*     Contempt     Seek Work     Other (*specify*):
  - (4)  Other (*specify*):
- c.  The temporary emergency (ex parte) orders are TERMINATED for the reasons stated  [on Attachment 8c.](#)  
 in this section:

**9. Service of order**

- a.  No further service is required. Both parties were present at the hearing when the court granted this order.
- b.  The documents listed in 10 must be served by (*date*): \_\_\_\_\_ on (*specify*): \_\_\_\_\_
  - (1)  Petitioner/Plaintiff
  - (2)  Respondent/Defendant
  - (3)  Other Parent/Party
  - (4)  Other (*specify*):
- c.  All documents must be  personally served     served by mail.
- d.  Other orders regarding service (*specify*):

**10. Documents for service**

A filed copy of this order (form FL-307) must be presented as the cover page to the following documents when served:

- a.  A copy of the previously filed *Request for Order* or *Order to Show Cause*
- b.  A copy of the extended or modified *Temporary Emergency (Ex Parte) Orders* (form FL-305)
- c.  Other (*specify*):

11.  A *Responsive Declaration to Request for Order* ([form FL-320](#)) must be filed and served on or before (*date*):

12.  Other orders:

Date:



\_\_\_\_\_  
 JUDICIAL OFFICER