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## INVITATION TO COMMENT SPR11-61

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Title	Action Requested
Protective Orders: Rule Changes to Reflect and Implement Recent Legislation	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 2.503 and 3.1152 and repeal rule 3.1153	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov

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### Summary

This is a proposal to amend two California Rules of Court and to repeal a rule concerning civil protective orders. These changes are intended to reflect and implement recent legislation concerning protective orders.

Specifically, the Civil and Small Claims Advisory Committee proposes that the Judicial Council: (1) amend rule 2.503 of the California Rules of Court to add records in private postsecondary school violence prevention proceedings to the list of types of cases whose records are available electronically only at the courthouse; (2) amend rule 3.1152 to revise the procedures in civil harassment, private postsecondary school violence, and workplace violence prevention proceedings to be consistent with recent case law and closer to the procedures applicable in domestic violence prevention proceedings; and (3) repeal rule 3.1153 on the ability of minors to appear without counsel be repealed because this ability has been clarified through recent legislation.

### Discussion

In 2010, the Judicial Council sponsored legislation that will result in the comprehensive revision of the protective order statutes.<sup>1</sup> Assembly Bill 1596 (AB 1596) was enacted and signed by the

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<sup>1</sup> A copy of the Judicial Council report recommending the protective order legislation is available at [www.courtinfo.ca.gov/jc/documents/reports/121509item5.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/121509item5.pdf).

*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 These proposals are circulated for comment purposes only.*

Governor.<sup>2</sup> This bill will become effective on January 1, 2012. To implement this and other recent legislation, several changes should be made to the rules of court on protective orders.

### **Amend Rule 2.503**

Rule 2.503 concerns remote access to electronic court records. Subdivision (c) lists various records that are to be made available only at the courthouse. This list currently includes all protective order records except those under the newly created private postsecondary school violence prevention statute, Code of Civil Procedure section 527.85.<sup>3</sup>

Protective order records have generally been included on the list in rule 2.503(c) because the sensitive nature of the information contained in these records makes them more suitable for inspection only at the courthouse. The Civil and Small Claims Advisory Committee proposes that records of private postsecondary school violence prevention proceedings be added to the list in (c).

### **Amend Rule 3.1152**

Rule 3.1152 on protective orders contains provisions relating to the scheduling of hearings, the service of the orders, and the time for filing and serving responses. In addition, it provides that there is no requirement to submit memorandums with petitions for protective orders. This rule currently applies only to civil harassment and workplace violence prevention proceedings

Because AB 1596 has been enacted and will soon become effective, several changes in the rule are needed. Some of these changes are purely technical—such as changing “defendant” to “respondent” to be consistent with the language used in all the protective order statutes under AB 1596. Also, because all the protective order statutes will have specific, uniform provisions regarding the scheduling of hearings, subdivision (a) of the rule is no longer necessary and should be deleted.

Additional changes to rule 3.1152 are appropriate at this time. The purpose of these amendments would be to make this rule applicable to four different types of civil protective order proceedings (rather than two) and to provide standard procedures for all of these types of proceedings that are consistent with recent case law and closer to the domestic violence prevention procedures, to the extent that is feasible.

First, rule 3.1152(c) would be modified to state that requests for protective orders, notices of hearing, and temporary restraining orders must be personally served on respondents at least five days before the hearing, unless the court for good cause orders a shorter time. This revision

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<sup>2</sup>The text of AB 1596, as chaptered, may be viewed at [www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1551-1600/ab\\_1596\\_bill\\_20100930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1551-1600/ab_1596_bill_20100930_chaptered.pdf).

<sup>3</sup> Section 527.85 was added by AB 188 [Stats. 2009, ch. 566, § 1].

reflects that notices of hearing rather than orders to show cause currently are served on respondents. Also, the amended statement of the law is consistent with time for service provided in all the amended statutes that will go into effect under AB 1596 on January 1, 2012.

Second, rule 3.1152(d) would be amended to modify the provision on serving responses. The amended rule would state that a response may be written or oral, reflecting the holding in *Ross v. Figueroa* (2006) 139 Cal.App.4th 856 for domestic violence cases. Also, as in Family Code section 243, the amended rule would provide that if a response is filed and served at least two days before the hearing, the petitioner would not be entitled to a continuance based on the response. These provisions would replace the statement in the current version of the rule that the petition “must be filed and delivered to plaintiff or plaintiff’s attorney no later than 48 hours before the hearing.”

Third, a new subdivision (e) would be added on continuances of hearings. This provision would state that a respondent may request continuance of the hearing upon a showing of good cause. This new provision reflects the holding in *Freeman v. Sullivant* (February 3, 2011) \_\_Cal.App.4th\_\_ [11 DAR 2003]. The rule would also provide that, if the court in its discretion grants the continuance, any temporary restraining order that has been granted would remain in effect until the end of the continued hearing, unless otherwise ordered by the court.

### **Repeal Rule 3.1153**

Rule 3.1153 provides that minors may appear without counsel for the purpose of obtaining or objecting to various protective orders. This rule implemented Code of Civil Procedure section 374. The rule, however, is no longer necessary. Under AB 1596, cross-references to section 374, stating that minors may appear without counsel, have been included in the appropriate protective order statutes. Hence, the attached proposal includes the repeal of rule 3.1153.

Rules 2.503 and 3.1152.of the California Rules of Court would be amended and rule 3.1153 would be repealed, effective January 1, 2012, to read:

1 **Rule 2.503. Public Access**

2  
3 **(a)-(b) \* \* \* \***

4  
5 **(c) Courthouse electronic access only**

6  
7 A court that maintains the following records in electronic form must provide electronic  
8 access to them at the courthouse, to the extent it is feasible to do so, but may provide  
9 remote electronic access only to the records governed by (b):

- 10  
11 (1) Records in a proceeding under the Family Code, including proceedings for  
12 dissolution, legal separation, and nullity of marriage; child and spousal  
13 support proceedings; child custody proceedings; and domestic violence  
14 prevention proceedings;  
15  
16 (2) Records in a juvenile court proceeding;  
17  
18 (3) Records in a guardianship or conservatorship proceeding;  
19  
20 (4) Records in a mental health proceeding;  
21  
22 (5) Records in a criminal proceeding;  
23  
24 (6) Records in a civil harassment proceeding under Code of Civil Procedure  
25 section 527.6;  
26  
27 (7) Records in a workplace violence prevention proceeding under Code of Civil  
28 Procedure section 527.8;  
29  
30 ~~(7)~~(8) Records in a private postsecondary school violence prevention proceeding  
31 under Code of Civil Procedure section 527.85;  
32  
33 ~~(8)~~(9) Records in an elder or dependent adult abuse prevention proceeding under  
34 Welfare and Institutions Code section 15657.03; and  
35  
36 ~~(9)~~(10) Records in proceedings to compromise the claims of a minor or a person  
37 with a disability.  
38

39 **(d)-(i) \* \* \* \***

1 **Rule 3.1152. Requests for protective orders to prevent civil harassment, and**  
2 **workplace violence, private postsecondary school violence, and elder or**  
3 **dependent adult abuse**

4  
5 **(a) ~~Scheduling of hearing~~**

6  
7 ~~On the filing of a petition for an injunction under Code of Civil Procedure section~~  
8 ~~527.6 or 527.8, a hearing must be set in accordance with the requirements of~~  
9 ~~subdivision (d) of section 527.6 or subdivision (f) of section 527.8.~~

10  
11 **(a) Application**

12  
13 This rule applies to requests for protective orders under Code of Civil Procedure  
14 sections 527.6, 527.8, and 527.85, and Welfare and Institutions Code  
15 section 15657.03.

16  
17 **(b) ~~No memorandum required Temporary restraining order~~**

18  
19 Unless ordered by the court, no memorandum is required in support of or in  
20 opposition to a request for a protective order. A temporary restraining order may be  
21 granted in accordance with the provisions of Code of Civil Procedure section  
22 527.6(e) or 527.8(e), but unless otherwise ordered no memorandum is required.

23  
24 **(c) ~~Service of petition requests, notices, and orders~~**

25  
26 The petition and order to show cause, request for a protective order, notice of  
27 hearing, and any temporary restraining order, must be personally served on the  
28 defendant respondent at least five days before the hearing, unless the court for good  
29 cause orders a shorter time. Service must be made in the manner provided by law  
30 for personal service of summons in civil actions.

31  
32 **(d) ~~Response by defendant~~**

33  
34 The response to a request for a protective order may be written or oral, or both. If A  
35 a written response by defendant must be filed and delivered to plaintiff or  
36 plaintiff's is served on the petitioner or, if the petitioner is represented, on the  
37 petitioner's attorney no later than 48 hours at least two calendar days before the  
38 hearing, the petitioner is not entitled to a continuance on account of the response.

39  
40 **(e) Continuance**

41  
42 A respondent may request continuance of the hearing upon a showing of good  
43 cause. If the court in its discretion grants the continuance, any temporary

1 restraining order that has been granted remains in effect until the end of the  
2 continued hearing unless otherwise ordered by the court.

3  
4  
5 **Rule 3.1153. ~~Minors may appear without counsel to seek specified restraining~~**  
6 **~~orders~~**

7  
8 ~~A minor, accompanied by a duly appointed and acting guardian ad litem, may be~~  
9 ~~permitted to appear in court without counsel for the limited purpose of obtaining or~~  
10 ~~opposing:~~

11  
12 ~~(1) — (1) An injunction or temporary restraining order or both to prohibit~~  
13 ~~harassment under Code of Civil Procedure section 527.6;~~

14  
15 ~~(2) — (2) An injunction or temporary restraining order or both against violence or a~~  
16 ~~credible threat of violence in the workplace under Code of Civil Procedure~~  
17 ~~section 527.8;~~

18  
19 ~~(3) — A protective order under Family Code section 6200 et seq.; or~~

20  
21 ~~(4) — A protective order under Family Code sections 7710 and 7720.~~

22  
23 ~~In making the determination concerning allowing appearance without counsel, the court~~  
24 ~~should consider whether the minor and the guardian have divergent interests.~~

## Item SPR11-61 Response Form

**Title: Protective Orders: Rule Changes to Reflect and Implement Recent Legislation** (amend Cal. Rules of Court, rules 2.503 and 3.1152; repeal rule 3.1153)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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**DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011**

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*