

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669,
cara.vonk@jud.ca.gov

DATE: September 23, 2004

SUBJECT: Default Judgment (amend Cal. Rules of Court, rule 388; revise form 982(a)(6)) (Action Required)

Issue Statement

1. Rule 388 specifies documents that must be submitted in support of a default judgment on declarations, including the mandatory *Request for Entry of Default* (form 982(a)(6)). Attorneys and clerks are confused whether form UD-116, *Declaration for Default Judgment by Court*, is authorized under rule 388, because it is not among the documents or forms mentioned in the rule. A reference to form UD-116 should be added.
2. Form 982(a)(6), *Request for Entry of Default*, needs to be revised to state that item 7, Memorandum of Costs, must be completed only if a money judgment is requested. Also, the form should be revised to replace "Soldiers' and Sailors' Civil Relief Act of 1940" with the updated "Servicemembers Civil Relief Act."

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005:

1. Amend rule 388 to allow filing of optional form UD-116, *Declaration for Default Judgment by Court (Unlawful Detainer—Code Civ. Proc., § 585(d))*, when a party seeks a default judgment on declarations in an unlawful detainer case; and
2. Revise form 982(a)(6), *Request for Entry of Default*, to (1) require that item 7, Memorandum of Costs, be completed only when a money judgment is requested and (2) modify the Declaration of Nonmilitary Status under item 8 to refer to the Servicemembers Civil Relief Act.

The text of amended rule 388 is attached at page 4. Revised form 982(a)(6), *Request for Entry of Default*, is attached at pages 5–6.

Rationale for Recommendation

The Judicial Council approved an optional form, *Declaration for Default Judgment by Court (Unlawful Detainer—Code Civ. Proc., § 585(d))* (form UD-116), effective July 1, 2003. This declaration may be filed in a court that will enter an unlawful detainer judgment on declarations instead of personal testimony after a default has been entered. Rule 388 of the California Rules of Court governing default judgments would be amended to allow form UD-116 to be used when a party seeks a default judgment on declarations in an unlawful detainer case. Currently the rule requires that form 982(a)(6), *Request for Entry of Default*, be used. This form would continue to be used to notify the court that a court judgment is being requested through the completion of item 1b, listing the names of defendants against whom a court judgment is requested. When declarations are allowed instead of personal testimony under Code of Civil Procedure section 585(d), form UD-116 would supplement form 982(a)(6) to support all of the elements required for obtaining an unlawful detainer judgment. A copy of form UD-116 is attached at pages 10–12 for information.

Form 982(a)(6), the *Request for Entry of Default* form, would be revised to state that item 7, Memorandum of Costs, must be completed if a money judgment is requested. This item would not be completed in an unlawful detainer case when judgment for restitution of the premises and issuance of a writ of execution (for possession) is requested from the clerk under item 1(c)(1) of the form. A separate application for additional relief demanded in the complaint such as back rent, damages, attorney fees, and costs must be filed following the default judgment for possession. (See Code of Civil Procedure section 1169.)¹

¹ The separate application for additional relief may be obtained by asking for a court judgment (item 1b on the form) and submitting evidence to support the award at a “prove-up hearing” or by a “prove-up declaration.” (See Judicial Council form UD-116, specially prepared for use in unlawful detainer default situations.) Costs of suit are recoverable by filing a memorandum of costs after the trial court judgment. (See Cal. Rules of Court, rule 870(a)(2); form MC-010, *Memorandum of Costs (Summary)*, or form MC-012, *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest*.)

The form also would be modified to reflect recent federal legislation renaming the “Soldiers’ and Sailors’ Civil Relief Act of 1940” as the “Servicemembers Civil Relief Act” (50 U.S.C. App. §§ 501–596) by amending the “Declaration of nonmilitary status” under item 8 to reflect this change.

Alternative Actions Considered

Although rule 388 could be left unchanged, this would mean that a useful form, UD-116, would not be authorized in courts that allow a default judgment to be entered on declarations.

Although the *Request for Entry of Default* form could be left unchanged, parties may be misled if the form is not revised to conform to current law.

Comments From Interested Parties

Of the twelve comments received, none opposed the proposed changes. Five commentators suggested improvements to form UD-116, which was not under consideration for revision but was attached to the invitation to comment for reference. The committee will save these comments for future consideration when the form is reviewed for improvement.

Another commentator suggested that the Judicial Council adopt a new form, *Request to Vacate Default Judgment*, to lessen the burden on the defendant of preparing a motion to vacate and to balance the plaintiff’s advantage of a form to request an entry of default. The committee will put this suggestion for a new form on its work plan for future consideration.

The committee agreed to correct the spelling of the Servicemembers Civil Relief Act on form 982(a)(6) to conform to the federal spelling and to correct the effective date of the form in the footer.

A chart with the comments and committee responses is attached at pages 7–9.

Implementation Requirements and Costs

Courts may incur some minor costs in making the revised form available to the public. However, some courts no longer keep supplies of paper forms on hand. Instead, these courts print a form on request from the California Courts Web site for a small fee.

Attachments

Rule 388 of the California Rules of Court is amended, effective January 1, 2005, to read:

1 **Rule 388. Default judgments**

2 (a) **[Documents to be submitted]** A party seeking a default judgment on
3 declarations ~~shall~~ must use mandatory Judicial Council form 982(a)(6)
4 ~~and shall~~. In an unlawful detainer case, a party may in addition use
5 optional Judicial Council form UD-116 when seeking a court judgment
6 based on declarations. The following must be included in the
7 documents filed with the clerk ~~the following~~:

- 8 (1) Except in unlawful detainer cases, a brief summary of the case
9 identifying the parties and the nature of plaintiff's claim;
- 10 (2) Declarations or other admissible evidence in support of the judgment
11 requested;
- 12 (3) Interest computations as necessary;
- 13 (4) A memorandum of costs and disbursements;
- 14 (5) A declaration of nonmilitary status for each defendant against whom
15 judgment is sought;
- 16 (6) A proposed form of judgment;
- 17 (7) A dismissal of all parties against whom judgment is not sought or an
18 application for separate judgment against specified parties under Code
19 of Civil Procedure section 579, supported by a showing of grounds for
20 each judgment;
- 21 (8) Exhibits as necessary; and
- 22 (9) A request for attorney fees if allowed by statute or by the agreement
23 of the parties.

PLAINTIFF/PETITIONER: <input type="checkbox"/> 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 of Civil Procedure Section 585.5** (required 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 1a of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

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)
-------------------------------	-----------------------------------

Default Judgment
(amend Cal. Rules of Court, rule 388; revise form 982(a)(6))
SPR04-13

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Elissa D. Barrett Director, Housing Conditions Project Bet Tzedek Legal Services Los Angeles, California	AM	Y	We have no opposition to the proposed changes in form 982(a)(6) as presented. Our only comment is that – on the final section of page two of this form – the text for the “Servicemembers Civil Relief Act” should be uniform with the language of the statute. Now, it is inconsistent and reads “service members’ Civil Relief Act.” We also request that the Council explore the possibility of creating a form-based mechanism for tenants/defendants who need to file a Request to Vacate Default Judgment. There is no reason the burden of drafting and preparing a motion be lessened for the plaintiff and not the defendant.	Agree. See revised form. See also commentators 4 and 10. The committee will put on its work plan for future consideration the commentator’s suggestion that the Judicial Council develop a new form, <i>Request to Vacate Default Judgment</i> .
2.	Ms. Naida Castro Division Chief Superior Court of Los Angeles County Los Angeles, California	AM	N	The Summary of Exhibits appears to be confusing. I had to go back to each item to make sure that there would not be any Exhibits 1 – 4a, 5a – 5c, and 7 – 8a. Normally, the first exhibit would be referred to as Exhibit 1, and so forth.	This is a comment on current form UD-116, which was attached to the invitation to comment for reference. The committee will save this comment for future consideration when form UD-116 is reviewed.
3.	Mr. Harold Garcia-Shelton Attorney Bay Area Legal Aid San Jose, California	A	N	None.	No response needed.
4.	Ms. Kim Hubbard President Orange County Bar	AM	N	Form UD-116 should have a section added for a claim of forcible entry under CCP § 1159 and statutory damages under CCP § 1174(b) for malice.	This is a comment on current form UD-116, which was attached to the invitation to comment for reference. The committee

Default Judgment
(amend Cal. Rules of Court, rule 388; revise form 982(a)(6))
SPR04-13

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Association Irvine, California			Form 982(a) (6) should be corrected to reflect the new capitalized title of the “Service Members Civil Relief Act”.	will save this comment for future consideration when form UD-116 is reviewed Agree. See revised form. See also commentators 1 and 10.
5.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	AM	Y	The following comments were received from our court managers: Page 3 item 22 is confusing and has promoted a recent challenge by an attorney. We require the ORIGINAL proof of service of the three-day notice. This sentence seems to imply that a copy will be accepted in lieu of. Delete the word “copy.”	This is a comment on current form UD-116, which was attached to the invitation to comment for reference. The committee will save this comment for future consideration when form UD-116 is reviewed.
6.	Ms. Sandra Mason Director of Civil Operations Superior Court of San Luis Obispo County San Luis Obispo, California	A	N	None.	No response needed.
7.	Judge Philip Jo Moscone Superior Court of San Francisco County San Francisco, California	A	N	None.	No response needed.
8.	Ms. Jody Patel Executive Officer Superior Court of	AM	Y	The following language could be clarified: 2. The property concerning this action is located at (street address, apartment number, city, and county):	This is a comment on current form UD-116, which was attached to the invitation to comment for reference. The committee

Default Judgment
(amend Cal. Rules of Court, rule 388; revise form 982(a)(6))
SPR04-13

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Sacramento County Sacramento, California			Perhaps “the subject property” or “the rental property” or similar language would be better. The form is used by pro se litigants.	will save this comment for future consideration when form UD-116 is reviewed.
9.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California	A	N	The form for the declaration is good, but I don’t understand why under item 4 (c) it references another declaration and order to admit a copy of a document, but does not do so elsewhere, such as 5(d), 6(d), etc. Can’t this be omitted? If it must remain, a form for declaration and order should be attached.	This is a comment on current form UD-116, which was attached to the invitation to comment for reference. The committee will save this comment for future consideration when form UD-116 is reviewed.
10.	The State Bar of California San Francisco, California	A	Y	CAJ endorses the revised form, but notes that “service members” in Paragraph 8, the Declaration of Nonmilitary Status, should read “Servicemembers”.	Agree. See revised form. See also commentators 1 and 4.
11.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of Nevada County Nevada City, California	A	N	None.	No response needed.
12.	Mr. Walt Welti President HelpUSoft Corporation Concord, California	AM	N	The Request for Entry of Default has a typo at the bottom of page 2. The revision date should be changed from July 1, 2003 to January 1, 2005.	Agree. See revised form.

PLAINTIFF (Name): DEFENDANT (Name):	CASE NUMBER:
--	--------------

6. Notice to quit.

- a. Defendant was served with a
- | | |
|--|--|
| (1) <input type="checkbox"/> 3-day notice to pay rent or quit | (4) <input type="checkbox"/> 3-day notice to quit |
| (2) <input type="checkbox"/> 3-day notice to perform covenants or quit | (5) <input type="checkbox"/> 30-day notice to quit |
| (3) <input type="checkbox"/> Other (specify): | (6) <input type="checkbox"/> 60-day notice to quit |
- b. The 3-day notice to pay rent or quit demanded rent due in the amount of (specify): \$ _____ for the rental period beginning on (date) _____ and ending on (date) _____.
- c. The total rent demanded in the 3-day notice under item 6b is different from the agreed rent in item 4a(2) (specify history of dates covered by the 3-day notice and any partial payments received to arrive at the balance) on Attachment 6c (form MC-025).
- d. The original or copy of the notice specified in item 6a is attached to (specify): the original complaint. this declaration, labeled Exhibit 6d. (The original or a copy of the notice MUST be attached to this declaration if not attached to the original complaint)

7. Service of notice.

- a. The notice was served on defendant (name each):
- (1) personally on (date):
 - (2) by substituted service, including a copy mailed to the defendant, on (date):
 - (3) by posting and mailing on (date mailed):
- b. A prejudgment claim of right to possession was served on the occupants pursuant to Code of Civil Procedure section 415.46.

8. Proof of service of notice. The original or copy of the proof of service of the notice in item 6a is attached to (specify):

- a. the original complaint.
- b. this declaration, labeled Exhibit 8b. (The original or copy of the proof of service MUST be attached to this declaration if not attached to the original complaint.)

9. Notice expired. On (date): _____

the notice in item 6 expired at the end of the day and defendant failed to comply with the requirements of the notice by that date. No money has been received and accepted after the notice expired.

10. The fair rental value of the property is \$ _____

per day, calculated as follows:

- a. (rent per month) x (0.03288) (12 months divided by 365 days)
- b. rent per month divided by 30
- c. other valuation (specify):

11. Possession. The defendant

- a. vacated the premises on (date):
- b. continues to occupy the property on (date of this declaration):

12. Holdover damages. Declarant has calculated the holdover damages as follows:

- a. Damages demanded in the complaint began on (date):
- b. Damages accrued through (date specified in item 11):
- c. Number of days that damages accrued (count days using the dates in items 12a and 12b):
- d. Total holdover damages ((daily rental value in item 10) x (number of days in item 12c)): \$ _____

13. Reasonable attorney fees are authorized in the lease or rental agreement pursuant to paragraph (specify): _____ and reasonable attorney fees for plaintiff's attorney (name): _____ are \$ _____

14. Court costs in this case, including the filing fee, are \$ _____

<input type="checkbox"/> PLAINTIFF (Name): <input type="checkbox"/> DEFENDANT (Name):	CASE NUMBER:
--	--------------

15. Declarant requests a judgment on behalf of plaintiff for:

a. A money judgment as follows:

(1)	<input type="checkbox"/>	Past-due rent (<i>item 6b</i>)	\$	
(2)	<input type="checkbox"/>	Holdover damages (<i>item 12d</i>)	\$	
(3)	<input type="checkbox"/>	Attorney fees (<i>item 13</i>)*	\$	
(4)	<input type="checkbox"/>	Costs (<i>item 14</i>)	\$	
(5)	<input type="checkbox"/>	Other (<i>specify</i>):	\$	
(6)		TOTAL JUDGMENT	\$	

* Attorney fees are to be paid by (name) only.

b. Possession of the premises in item 2 (*check only if a clerk's judgment for possession was **not** entered*).

c. Cancellation of the rental agreement. Forfeiture of the lease.

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)
-------------------------------	---	-----------------------------------

Summary of Exhibits

- 16. Exhibit 4b: Original rental agreement.
- 17. Exhibit 4c: Copy of rental agreement with declaration and order to admit the copy.
- 18. Exhibit 5d: Copy of notice of change in terms.
- 19. Exhibit 5e: Original agreement for change of terms.
- 20. Exhibit 5f: Copy of agreement for change in terms with declaration and order to admit copy.
- 21. Exhibit 6d: Original or copy of the notice to quit under item 6a (*MUST be attached to this declaration if it is not attached to original complaint*).
- 22. Exhibit 8b: Original or copy of proof of service of notice in item 6a (*MUST be attached to this declaration if it is not attached to original complaint*).
- 23. Other exhibits (*specify number and describe*):