

**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
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DATE: September 23, 2004

SUBJECT: Unlawful Detainer Request to Set Case for Trial (adopt mandatory form UD-150) (Action Required)

Issue Statement

Some courts have developed a local form to request that the court set a trial date in an unlawful detainer proceeding. Some local forms may be confusing to the parties because they contain technical language or request information that does not apply in an unlawful detainer case. Several courts and one forms publisher have requested that the Judicial Council develop a statewide form. A Judicial Council form could save time for the parties, clerks, and judges by preventing unnecessary questions and delays.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt new mandatory form UD-150, *Request/Counter-Request to Set Case for Trial—Unlawful Detainer*, effective January 1, 2005, to:

- (1) Implement Code of Civil Procedure section 1170.5;
- (2) Establish whether the case is entitled to preference in setting the trial under Code of Civil Procedure section 1179a; and
- (3) Establish a uniform statewide form.

Proposed mandatory form UD-150 is attached at pages 5–6.

Rationale for Recommendations

Code of Civil Procedure section 1170.5 provides that trial in an unlawful detainer case “shall be held not later than the 20th day following the date that the request to set the time of the trial is made.” The statute does not mention additional requirements for the request, such as the estimated length of trial, filing of a counter memorandum if one of the parties does not agree with the request, or time within which a counter memorandum must be filed.¹

The wording of the title of the proposed form, “Request to Set Case for Trial” follows closely the language in the statute, “request to set the time of the trial.”² A check box in the title identifies whether the filing is a request or a counter request. The option was added in response to comments received. A check box also identifies the party filing the request (the plaintiff or the defendant). The form can be used by any party who does not agree with another party’s request and wishes to file his or her own request and includes items about jury or nonjury trial, the estimated time required for trial, and unacceptable trial dates. Each court would determine how to assign a trial date.³

An item asking whether the case is entitled to trial preference under Code of Civil Procedure section 1179a was modified in response to comments received. It now asks whether the right to possession is still in issue instead of whether the premises have been vacated. The plaintiff would be entitled to trial preference if a right to possession of the premises is still in issue.

The same unlawful detainer assistant registration information that is on the unlawful detainer complaint (form 982.1(90)), unlawful detainer answer (form 982.1(95)), and request for entry of default (form 982(a)(6)) has been included on this form. Business and Professions Code section 6408 requires that a registrant’s information appear on any papers or documents prepared by an unlawful detainer assistant.

¹ Repealed municipal court rule 507(d) of the California Rules of Court provided for service of a counter memorandum within five days after service of the memorandum in an unlawful detainer case.

² The title of the form does not revert to “memorandum to set” or “at-issue memorandum,” because those titles are tied to a system and assumptions repealed as “inconsistent with modern case management principles under which courts have the main responsibility for managing cases and ensuring their timely disposition.” (See December 7, 2001, Judicial Council report, tab 10, repealing rule 209, “civil cases at issue,” which governed the at-issue memorandum procedure in unified courts.)

³ At least one court automatically assigns the trial date when the answer is filed. Then the procedure under rules 375, 375.1, and 379 of the California Rules of Court could be used to reset the assigned trial date.

After reviewing local forms and the comments received, the committee incorporated several items that might be useful to the parties in a boxed “Notice” at the bottom of the form. These include notice of (1) the requirement to set trial for not later than 20 days after the first request is made, (2) the \$150 jury fee deposit required 5 days before trial, (3) the need to check with the court about reporter and interpreter services and fees, and (4) the ability to apply for a fee waiver and to ask the court clerk for a fee waiver form.

Although the form was proposed for optional use when it circulated for comment, the committee requested comment on whether the form should be mandatory. The State Bar of California’s Committee on Administration of Justice (CAJ) suggested that the form remain optional to allow courts to continue to use their own forms and related procedures. The advisory committee, however, was persuaded by the responses from three superior courts (Los Angeles, Ventura, and Sacramento Counties) that advocated a mandatory form. The Sacramento County court commented that adopting a mandatory form “is in keeping with the trend toward standardization which is a part of the work being done in the CCMS (California Case Management System) project. It would also simplify the process of capturing data during the processing of documents filed electronically.” The Ventura County court noted that a mandatory form would be more efficient because clerks would become familiar with the form, rather than looking at self-drafted forms. A mandatory form also would promote uniform statewide practice in setting unlawful detainer cases for trial.

Alternative Actions Considered

Although no form is statutorily required for adoption by the Judicial Council, parties could be misled or confused by current local forms, resulting in wasted time for the parties and the courts. A Judicial Council form would promote uniform statewide practice in setting unlawful detainer cases for trial, help process cases in courts that accept electronic filings, and help implement the future California Case Management System.

Comments From Interested Parties

Twelve comments were received. Ten commentators either agreed with the form or agreed if the form were revised. Two commentators, Bet Tzedek Legal Services Housing Conditions Project in Los Angeles and the State Bar of California’s Committee on Administration of Justice, disagreed with the proposed form.

The committee agreed with all suggestions for revising the form, including those of Bet Tzedek Legal Services and CAJ, except (1) CAJ’s recommendation that the form be optional and (2) the suggestion of the Superior Court of San Diego

County that the address of the premises be deleted as unnecessary. The committee recommends that the form be mandatory, based on responses from several courts as discussed above. The committee believes that the premises' address on the form is important, especially when a plaintiff has several lawsuits pending concerning multiple apartment buildings.

A chart with comments and committee responses is attached at pages 7–18.

Implementation Requirements and Costs

No special costs are required by this action. Court processing costs could be reduced due to the increased efficiencies of processing a form compared to processing self-drafted requests to set the case for trial.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX No. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT 11</h1> <h1 style="margin: 0;">9/23/04</h1> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p style="text-align: center;">Not approved by the Judicial Council</p> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<input type="checkbox"/> REQUEST <input type="checkbox"/> COUNTER-REQUEST TO SET CASE FOR TRIAL—UNLAWFUL DETAINER <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	CASE NUMBER:

1. **Plaintiff's request.** I represent to the court that all parties have been served with process and have appeared or have had a default or dismissal entered against them. I request that this case be set for trial.
2. **Trial preference.** The premises concerning this case are located at *(street address, apartment number, city, zip code, and county)*:
 - a. To the best of my knowledge, the right to possession of the premises is still in issue. This case is entitled to legal preference under Code of Civil Procedure section 1179a.
 - b. To the best of my knowledge, the right to possession of the premises is no longer in issue. No defendant or other person is in possession of the premises.
3. **Jury or nonjury trial.** I request a jury trial a nonjury trial.
4. **Estimated length of trial.** I estimate that the trial will take *(check one)*:
 - a. days *(specify number)*:
 - b. hours *(specify if estimated trial is less than one day)*:
5. **Trial date.** I am not available on the following dates *(specify dates and reasons for unavailability)*:

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

6. *(Complete in all cases.)* An unlawful detainer assistant did **not** did for compensation give advice or assistance with this form. *(If declarant has received **any** help or advice for pay from an unlawful detainer assistant, complete a–f.)*
 - 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)*:

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

Date:

_____ <small>(TYPE OR PRINT NAME)</small>		_____ <small>(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)</small>
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NOTICE

- An unlawful detainer case must be set for trial on a date not later than **20 days after the first request** to set the case for trial is made (Code Civ. Proc., § 1170.5(a)).
- If a jury is requested, \$150 must be deposited with the court 5 days before trial (Code Civ. Proc., § 631).
- Court reporter and interpreter services vary. Check with the court for availability of services and fees charged.
- If you cannot pay the court fees and costs, you may apply for a fee waiver. Ask the court clerk for a fee waiver form.

PLAINTIFF: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> DEFENDANT:	CASE NUMBER:
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PROOF OF SERVICE BY MAIL

Instructions: After having the parties served by mail with the Request/Counter-Request to Set Case for Trial—Unlawful Detainer, (form UD-150), have the person who mailed the form UD-150 complete this Proof of Service by Mail. An **unsigned** copy of the Proof of Service by Mail should be completed and served with form UD-150. Give the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (form UD-150) and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and **not a party to this case**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is (specify):

3. I served the *Request/Counter-Request to Set Case for Trial—Unlawful Detainer* (form UD-150) by enclosing a copy in an envelope addressed to each person whose name and address are shown below AND
 - a. **depositing** the sealed envelope in the United States mail on the date and at the place shown in item 3c with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 3c following 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.
 - c. (1) Date mailed:

 (2) Place mailed (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 MAILED FORM UD-150)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name

Address (number, street, city, and zip code)

4.		
5.		
6.		
7.		
8.		
9.		

List of names and addresses continued on a separate attachment or form MC-025, titled Attachment to Proof of Service by Mail.

Unlawful Detainer Request to Set Case for Trial
 (approve new form UD-150)
 SPR04-12

	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	N	Y	<p>We oppose the basic premise behind the new form UD-150 (i.e., that courts should fix a trial date at the time an answer is filed).</p> <p>If the court fixes a trial date at the time of the answer, parties will have to engage in compressed discovery and to incur the cost of expedited deposition transcripts. Otherwise, parties are free to conduct discovery, then request trial at an agreed upon time. We also note that the notice does not contain any information about fee waivers for jury trial, court reporter, court translator and other fees.</p> <p>Overall, tenant advocates have found in practice that it is highly unlikely for an unlawful detainer court to respond favorably to a motion to continue the trial date (CRC 375), a motion to advance, specially set, or reset the trial date (CRC 375.1), or an ex parte application for same (CRC 379). Time constraints, the shortage of legal aid lawyers and the fact that a majority of unlawful detainer defendants are pro per also make this arrangement highly prejudicial to tenants.</p> <p>In addition, we recommend that the Council create a form-based mechanism for defendants to request a different trial date. Even if the</p>	<p>Agree. In the “Notice” provision at the bottom of the form, it states that “an unlawful detainer case must be set for trial on a date not later than 20 days after the first request to set case for trial is made (Code Civ. Proc., § 1170.5(a)).</p> <p>Agree. See revised form. A fee waiver notice provision has been added.</p> <p>Agree. See revised form, which was amended to provide for a “counter request.”</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Unlawful Detainer Request to Set Case for Trial
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				grounds were limited to, among other things, defendant or attorney schedule conflicts, the status of discovery, and the status of settlement, this would be an improvement over the current system.	
2.	Ms. Naida Castro Division Chief, Superior Court of Los Angeles County Los Angeles, California	A	N	Make the form mandatory.	Agree. The three courts that responded to this question recommended that the form be mandatory. See comments 2 (Los Angeles), 3 (Ventura), and 8 (Sacramento).
3.	Ms. Linda Durand Court Program Manager—Senior Superior Court of Ventura County Ventura, California	AM	Y	We believe this form should be mandatory so that it is a familiar form to the clerks rather than looking at self drafted forms.	Agree. See revised form and response to comment 2.
4.	Mr. Harold Garcia-Shelton Attorney Bay Area Legal Aid San Jose, California	A	N	Much improved!	No response needed.
5.	Ms. Kim Hubbard President Orange County Bar	AM	N	A comment/note should be added under item 2 to state that if any party claims that the premises have not been vacated then the case	Agree. See revised form. See also comment 10.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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	Association Irvine, California			is entitled to preference under CCP11799; otherwise disputes will exist as to what constitutes “vacated” and how those disputes get resolved.	
6.	Mr. Stephen V. Love Executive Officer Superior Court of San Diego County San Diego, California	AM	Y	<p>The following comments were received from our court managers:</p> <ol style="list-style-type: none"> 1. Additional verbiage should be added to the Notice box at the bottom of the form at the end of the sentence regarding interpreters and court reporters. “Party requesting court reporter or interpreter services are responsible for their own arrangements and costs.” The verbiage as is seems to imply that the court may provide these services. 2. Include a check box in the title for a party to indicate that the request form is being filed as a counter request. 3. In line item #2. Eliminate space to enter the address of the premises. This is not necessary for the clerk to process the request to set the trial. 4. In line item #4. Clarify what this statement is asking for. Parties in pro per may not understand what is meant 	<p>Agree in principle. See revised form.</p> <p>Agree. See revised form. See also comment 2 and 8.</p> <p>The address may be important when a plaintiff has multiple suits pending in multiple apartment buildings.</p> <p>Agree. See revised form, which was adapted from the <i>Case Management Statement</i> (form CM-110).</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>by time. Most likely they will enter the time of hearing they prefer, i.e. 9:00 a.m., 1:30 p.m. or AM only, etc.</p> <p>5. Suggested verbiage: “Estimated length of time required for trial (specify hours and/or days) or Estimated trial time:_____ (Estimates of less than one day must be stated in hours and/or minutes).”</p> <p>6. Include a block at the end of the form after the party signature line for clerk’s use only to record the date, time and department of the hearing. A clerk’s use only block will allow the clerk to record the hearing information on the request form and then enter it in the court’s computer system. This is very helpful for volume courts where a clerk may be processing 10-20 requests at one time.</p>	<p>Agree in principle. See revised form.</p> <p>Agree. See revised form.</p>
7.	Ms. Sandra Mason Director of Civil Operations Superior Court of San Luis Obispo County San Luis Obispo,	A	N	Agree with proposed changes.	No response needed.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Unlawful Detainer Request to Set Case for Trial
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	California				
8.	Ms. Jody Patel Executive Officer Superior Court of Sacramento Sacramento, California	AM	Y	<u>Agree if modified.</u> Generally, we support the statewide standardization of this form. Further we feel the form should be mandatory. The adoption of such mandatory forms is in keeping with the trend toward standardization which is a part of the work being done in the CCMS (California Case Management System) project. It would also simplify the process of capturing data during the processing of documents filed electronically. [continued on page 16]	Agree. See response to comment 2.
9.	Ms. Tina Rasnow SHLA Center Coordinator Superior Court of Ventura County Ventura, California	A	N	None.	No response needed.
10.	The State Bar of California's Committee on Administration of Justice	N	Y	A dispute exists within CAJ as to whether proposed Form UD-150 can be a good and useful form. CAJ believes that under any circumstances, proposed Form UD-150 should be optional to allow courts in different	Of the courts that responded to this question, all recommended that the form be mandatory. See also response to comment 2.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>counties to continue to use their own forms and related procedures which enable efficient court administration.</p> <p>The dispute centers on whether the proposed form can effectively and appropriately address concerns about unlawful detainer trial preference. The term “vacated” in paragraph 2 is too ambiguous for this purpose, and adding to that paragraph the statement that no other defendant or other person is “in possession” of the premises might add to the confusion. Code of Civil Procedure section 1179a and Civil Code section 1952.3 both speak in terms of possession. The real legal issue is whether anybody claims a <i>right</i> to possession, not whether anybody is physically “in possession” (or whether the premises have physically been “vacated”). Whether all occupants of the premises who claim a right to possession have effectively delivered possession of the premises to the landlord such that a judgment for possession is no longer necessary can be a complex determination. The facts may be known to the landlord, or the available facts suspect. A tenant’s statement may suggest an</p>	<p>Agree. See revised form. See also comment 5.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>intention to maintain ongoing possessory claims even after moving out.</p> <p>There is some concern that trial preference may be denied when one defendant files the form without appreciating that there are others who claim a right to possession of the premises, and that the present language of paragraph 2b may encourage this by suggesting that one addition, while the court may be able to make a determination regarding trial preference even when different positions are taken by a landlord and tenant, this determination may not always be mechanistically, and that trial preference determinations might be made even when disputes exist. Those members believe the language proposed below would improve the form, but would not entirely eliminate these concerns.</p> <p>In order to fairly balance the competing interests of landlords and tenants as to trial preference, a landlord should only lose the right to an early trial date pursuant to Code of Civil Procedure section 1179a if all the</p>	<p>Agree in principle. See revised form.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>occupants' possessory interests have been unambiguously delivered to the landlord and a judgment of possession is unnecessary. Paragraph 2b might have language along the following lines, to clarify that the right to possession is not in dispute: "Defendant signing this form (or each defendant on whose behalf this form is prepared if signed by their attorney of record) is not in possession of the premises and does not claim any right to possession of the premises." The landlord, even though out of possession and with limited information, should only receive trial preference if the landlord's best available knowledge establishes that possession is in issue. Paragraph 2a might therefore read: "To the best of Plaintiff's knowledge the right to possession of the premises is still in issue and this case is entitled to trial preference under Code of Civil Procedure section 1179a."</p> <p>As a separate issue, the signature line on the proposed Proof of Service reads "(SIGNATURE OF PERSON COMPLETING THIS FORM)." That language is potentially confusing. The layperson may think the</p>	<p>Agree. See revised form.</p> <p>Agree. See revised form.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				person who completed the form – as opposed to the person doing the mailing – must sign the form, in cases where there are two different people. To avoid this potential confusion, the signature line should probably read: “(SIGNATURE OF PERSON MAILING THE FORM).”	
11.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of Nevada County Nevada City, California	A	N	Excellent idea!	No response needed.
12.	Mr. Walt Welti, President HelpUSoft Corporation Concord, California	AM	Y	Form UD-150 is well designed; however, we feel that page 2 should be modified as follows: The wording under the signature line is confusing and should be changed from “SIGNATURE OF PERSON COMPLETING THIS FORM” to “SIGNATURE OF DECLARANT”, otherwise it may appear that you want the signature of the person who completed the “Request to Set Case for Trial” form, instead of the person who mailed the form.	Agree in principle. See revised form. See also comment 10, page 11. Agree. See revised form.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				In Item 4, can you please leave 3 spaces between items 4b and 4c, 4d and 4e, 4f and 4g, 4h and 4i, 4j and 4k. There is plenty of room to do this, plus it would allow each address to be typed in 2 or 3 lines (as it appears on the envelope), rather than having to type each address on just one line so it will fit. Please refer to page 2 of Judicial Counsel form MC-050 (Substitution of Attorney), where the spacing is perfect to type multiple-line addresses.	
13	Ms. Jody Patel Executive Officer Superior Court of Sacramento County	AM	Y	[continued from page 11...] The counter memorandum was referenced in a former Rule of Court which was applicable to Municipal Court proceedings that has now been repealed. Accordingly, there is no provision for a counter memorandum. The reality is that they are still filed with great frequency. Some provision should be made to allow such counter memo's, and the form should be revised to allow a party to designate that s/he is filing a counter memo. The documents included in this packet infer that AOC feels if a Request to Set has been filed in a UD case, the opposing party must request a continuance of trial if the date is	Agree. See revised form, including opportunity to contest dates.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>problematic. Given the current fees imposed for filing such motions and, if granted, to continue a trial, it would seem an undue fiscal burden is being placed on UD litigants. Courts are allowing a litigant filing non-UD limited civil action an opportunity to file a counter memo to set. UD litigants should not be treated differently. Given the short time frame for UD trials and the lack of any requirement that the requesting party meet and confer with the other side before making such a request, it would seem the defendants are being given no choice about dates, even when a legitimate reason for objection to what is set forth in a Request to Set exists.</p> <p>Forcing the opposing party to file a motion or ex parte application for continuance creates unnecessary work for staff and judicial officers. Objections former set forth in a counter at issue memo were routinely resolved by staff without the need for judicial intervention or the need for calendaring and hearing motions for continuance.</p> <p>Pragmatically, since a large percentage of UD defendants are on fee waivers, elimination of a counter Request to Set would result in</p>	

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				additional work that does not generate offsetting revenue.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.