

**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
Case Management Subcommittee, Hon. Arthur E. Wallace, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
patrick.o'donnell@jud.ca.gov

DATE: October 1, 2004

SUBJECT: Elder and Dependent Adult Abuse Prevention (revise forms EA-100, EA-110, EA-120, EA-130, EA-140, EA-141, and EA-150) (Action Required)

Issue Statement

Senate Bill 226, signed last year by the Governor, extended the firearms prohibition and relinquishment provisions in other statutes to cases involving elder and dependent adult abuse. To implement that legislation, the Judicial Council revised the forms relating to elder and dependent adult abuse prevention, effective July 1, 2004, adding the appropriate requests, responses, orders, and notices. The forms also were circulated for public comment. The commentators have identified various technical ambiguities and omissions that should be corrected.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2005, revise the following forms to correct technical ambiguities, clarify instructions, and include appropriate cross-references:

1. *Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-100);
2. *Response to Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-110);
3. *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse) (CLETS)* (form EA-120);

4. *Restraining Order After Hearing (Elder or Dependent Adult Abuse) (CLETS)* (form EA-130);
5. *Proof of Personal Service (Elder or Dependent Adult Abuse)* (form EA-140);
6. *Proof of Service by Mail (Elder or Dependent Adult Abuse)* (form EA-141); and
7. *Instructions on Petition for Protective Order to Prevent Elder or Dependent Adult Abuse* (form EA-150).

The revised forms are attached at pages 5–22.

Rationale for Recommendation

Previously, the Penal Code had provided that every person who owns, possesses, purchases, or receives a firearm, knowing that he or she is prohibited from doing so by the prohibitions of certain protective orders is guilty of an offense. Last year, Senate Bill 226 added protective orders arising from elder or dependent adult abuse to the list of protective orders covered by those Penal Code provisions. (See Pen. Code, § 12021(g)(1).) The legislation also added a new section to the Code of Civil Procedure that requires persons subject to certain temporary restraining orders or injunctions, including those relating to elder and dependent abuse, to relinquish firearms. (Code of Civ. Proc., § section 527.9.) To implement SB 226, the elder and dependent adult abuse prevention forms were revised, effective July 1, 2004, without being circulated for public comment.

The forms have now been circulated, and comments on them have been received. Based on the comments, the Civil and Small Claims Advisory Committee has determined that further revisions to the forms are appropriate. The public comments, the committee's responses, and the recommended revisions are described below.

Alternative Actions Considered

Although the elder and dependent adult abuse forms might be left unchanged, the committee has concluded, based on the public comments, that additional revisions should be made to the forms.

Comments From Interested Parties

An invitation to comment on the forms was circulated in the spring of 2004. A total of seven comments were received. The commentators included court administrators, a legal editor, an attorney with the Department of Justice, and a local bar association. A chart summarizing the comments and the committee's responses is attached at pages 23–32.

One comment proposed the development and adoption of a plain-language version of these forms. The committee will consider this suggestion in the future.

Another general suggestion was to make the petition, response, and orders mandatory. The committee agreed. The forms were approved several years ago and have proven effective. Making these forms mandatory will ensure that they are used uniformly and consistently, throughout the state, in all petitions to prevent abuse of elders and dependent adults.

In addition, the commentators suggested various specific changes to the forms. The committee agreed with many of these, as discussed below.

On the *Petition for Protective Orders* (form EA-100), the references to CLETS (the California Law Enforcement Telecommunications System) have been removed; these references belong only on the orders. Item 11 (time for service) has been modified to include the statutory time period for service (up to two days before the hearing) as well as a space to indicate a shortened time for service. Items 12 and 13 have been modified to include a statement that the *Attachment* (form MC-025) may be used if more space is needed.

On the *Response to Petition for Protective Orders* (form EA-110), the references to CLETS have been removed. In item 6, a statement has been added that the *Attachment* (form MC-025) may be used if more space is needed.

On the *Order To Show Cause and Temporary Restraining Order* (form EA-120), in item 6 (firearms prohibition and relinquishment order) a sentence has been added: “Form EA-145 may be used for this purpose.” In item 10c, the list of documents to be served has been corrected to delete “CLETS” from the titles of forms EA-100 and EA-110, and to add form CH-145. Some stylistic and formatting changes have been made to this form. Finally, a new notice about the availability of assisted listening systems has been added.

On the *Restraining Order After Hearing* (form EA-130), in item 2b, two subdivisions were added for the court to indicate whether the order may be served by mail or must be personally served.

On the proofs of service (forms EA-140 and EA-141), the titles and footers have been revised to clarify that one form is for proof of personal service and the other for proof of service by mail. The forms have been placed on separate pages instead of being on the reverse sides of a single page.

Finally, the *Instructions on Petitions for a Protective Order to Prevent Elder or Dependent Adult Abuse* (form EA-150) has been revised. The references to the proofs of service have been changed to use their new titles. Item 9 has been modified to delete the instruction about delivering proofs of service to law enforcement, because this will be

done by the court. A notice regarding the availability of assisted listening systems has been added at the end of the instructions.

Implementation Requirements and Costs

Courts will incur some incidental costs in replacing the current forms with the revised versions.

Attachment

PETITIONER:	CASE NUMBER:
RESPONDENT:	

5. This petition should be granted because
- the person to be restrained caused the person to be protected to suffer physical harm or pain or mental suffering through physical abuse, financial abuse, abandonment, isolation, abduction, or other treatment.
 - the person to be restrained has the care or custody of the person to be protected, but has neglected that person or deprived the person of goods or services that are necessary to avoid physical harm or mental suffering.

PETITIONER REQUESTS THAT THE COURT MAKE THE ORDERS INDICATED BY THE CHECK MARKS IN THE BOXES BELOW.

6. **PERSONAL CONDUCT ORDER** **To be ordered now and to remain in effect until the hearing.**
 Petitioner seeks an order that the restrained person must not abuse, intimidate, molest, attack, strike, stalk, threaten, sexually assault, batter, harass, telephone, destroy the personal property of, or contact directly or indirectly, by mail or otherwise, the protected person.

7. **RESIDENCE EXCLUSION ORDER** **To be ordered now and to remain in effect until the hearing.**
 a. Petitioner seeks an order that the restrained person must immediately move from and must not return to (*address*):

and may take only personal clothing and effects needed until the hearing.

- b. The residence exclusion order should be granted because
- (1) Title to or lease of the residence at the address listed above is not in the sole name of the person to be restrained nor is it in the name of the person to be restrained and another person besides the person to be protected.
 - (2) The person to be protected will suffer physical or emotional harm if the restrained person does not leave the residence.
 - (3) The person to be protected has a legal right to live at the address listed above.
 - (4) The restrained person assaulted or threatened to assault the person to be protected.

8. **STAY-AWAY ORDER** **To be ordered now and to remain in effect until the hearing.**

Petitioner seeks an order that the restrained person **must** stay at least (*specify*): _____ yards away from the protected person and the following places:

- The residence of the protected person located at (*specify*):
- The place of work of the protected person (*specify*):
- The vehicle of the protected person (*specify*):
- Other (*specify*):

9. If the restrained person is ordered to stay away from all the places specified in item 8, will the restrained person still be able to get to his or her residence, school, place of employment, or place of worship? Yes No
 (*If no, explain*):

10. **FIREARMS PROHIBITION AND RELINQUISHMENT ORDER**

Petitioner requests an order that the restrained person is prohibited from owning, possessing, purchasing or receiving, or attempting to purchase or receive a firearm, and must relinquish any firearm that he or she owns or possesses. The abuse in this case is not solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(This is not a Court Order)

PETITIONER: RESPONDENT:	CASE NUMBER:
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11. **TIME FOR SERVICE**

Petitioner requests that time for service of the *Order to Show Cause* and accompanying papers be served no less than 2 days before the date set for hearing other (specify time): . (If you need the time to complete service shortened to less than 2 days before the hearing, provide additional facts to support your request.)

12. **OTHER ORDERS** (Specify any other orders that you are requesting. You must provide reasons for your requests.)

Continued on Attachment 12. (If you need more space, check here and use an attachment. You may use Attachment (form MC-025) designated as "Attachment 12.")

13. **DESCRIPTION OF ABUSE AND OTHER FACTS SUPPORTING PETITION**

(Describe in detail the most recent incidents of abuse. List each incident separately. Describe the incident, including who did what to whom and any injuries. Describe any history of abuse.):

Continued on Attachment 13. (If you need more space, check here and add an attachment. You may use Attachment (form MC-025) designated as "Attachment 13.")

(This is not a Court Order)

PETITIONER: RESPONDENT:	CASE NUMBER:
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14. NO FILING FEE

There is no filing fee for this petition.

15. NO FEE FOR SERVICE OF ORDERS

Petitioner requests free service by law enforcement of the orders issued based on this petition pursuant to Welfare & Institutions Code section 15657.03(m). *(For the court to determine if you are eligible for free service, you must file a completed copy of the Application for Waiver of Court Fees and Costs (form 982(a)(17) with this petition.)*

16. ATTORNEY FEES AND COSTS

Petitioner requests that petitioner's attorney fees and costs be paid by the restrained person as follows:

<u>Item</u>	<u>Amount</u>
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17. SERVICE OF ORDERS ON LAW ENFORCEMENT

Petitioner requests that copies of the order be given to the law enforcement agencies listed below by:

- a. the petitioner.
- b. the petitioner's attorney.
- c. the clerk of the court, by mail.

<u>Law Enforcement Agency</u>	<u>Address</u>
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Please note that this *Petition for Protective Orders* and the orders issued by the court must be personally served on the restrained person. No person to be protected, including yourself, may personally serve these papers.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)		(SIGNATURE OF ATTORNEY)
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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 OF PETITIONER)		(SIGNATURE OF PETITIONER)
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(This is not a Court Order)

PETITIONER: RESPONDENT:	CASE NUMBER:
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5. **OTHER ORDERS** (see item 12 of the *Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-100))
- a. I consent to the other orders requested in the petition.
- b. I do not consent to the other orders requested in the petition.
- c. I consent to the following orders (*specify*):

6. **FACTS SUPPORTING THIS RESPONSE**

Facts supporting this response are as follows:

Continued on Attachment 6. (*If you need more space, check here and add an attachment. You may use Attachment (form MC-025) designated as "Attachment 6."*)

7. **ATTORNEY FEES AND COSTS**

- a. I request the court to order payment of my attorney fees if I win.
- b. I request the court to order payment of my out-of-pocket expenses incurred as the result of an ex parte temporary restraining order issued without sufficient facts.

The amounts are as follows:

<u>Item</u>	<u>Amount</u>
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Date:

_____ (TYPE OR PRINT NAME)		_____ (SIGNATURE OF ATTORNEY)
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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 RESPONDENT)
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO. (Optional): _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT 11</h1> <h1 style="margin: 0;">9/17/04</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER (Elder or Dependent Adult Abuse) (CLETS)	CASE NUMBER:

ORDER TO SHOW CAUSE

1. **TO** (name of person to be restrained):
2. **YOU ARE ORDERED** to appear in this court at the date, time, and place shown in the box below to give any legal reason why the orders sought and the other relief requested in the petition should not be granted.

NOTICE OF HEARING

a. Date:	Time:	Dept.:	Room:
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b. The address of the court where the hearing will be held is shown above is (specify):

A court hearing has been set at the time and place indicated above. You may attend this hearing, with or without an attorney, to give any legal reason why the orders requested in the attached petition should not be granted. Before preparing your response, you should read the NOTICES TO THE RESPONDENT on page 3 of this document and the NOTICE REGARDING NONAPPEARANCE AT HEARING AND SERVICE OF ORDER and the INSTRUCTIONS FOR THE RESPONDENT on page 4. If you do not appear at the court hearing at the date, time, and place indicated in this notice, the court may grant the requested orders for up to three years without further notice to you.

Date:

 JUDICIAL OFFICER
 SIGNATURE ON PAGE 3 OR FOLLOWS LAST ATTACHMENT

IMPORTANT INFORMATION FOR RESPONDENT

Carefully read these and all other papers served on you. The *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* tells you when to appear in court and may contain a temporary restraining order forbidding you from doing certain things. Read pages 2 and 3 to determine if there is a restraining order against you. If you disobey the court's orders, criminal charges may be filed against you.

If you want to respond to or oppose the *Petition for Protective Orders (Elder or Dependent Adult Abuse)*, you should file a *Response to Petition for Protective Orders* (form EA-110). Read the Instructions for the Respondent on page 4 for information on how to complete your *Response*.

PETITIONER: RESPONDENT:	CASE NUMBER:
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TEMPORARY RESTRAINING ORDERS

THIS ORDER SHALL EXPIRE AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX ABOVE UNLESS EXTENDED BY THE COURT.

THE COURT FINDS

3. a. The restrained person is (*name*):

b. The restrained person is described as follows:

Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht.: ____ Wt.: ____ Hair color: ____ Eye color: ____ Race: ____ Age: ____ Date of birth: ____
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4. The protected person is (*name*):

UNTIL THE TIME OF HEARING, THE COURT ORDERS

5 a. **PERSONAL CONDUCT ORDER**

The restrained person must not:

- (1) abuse, intimidate, molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace of, the protected person.
- (2) telephone or contact directly or indirectly, by mail or otherwise, the protected person.

b. **RESIDENCE EXCLUSION ORDER**

The restrained person **must** immediately move from and must not return to the protected person's residence located at (*address*):

and may take only personal clothing and effects needed until the hearing.

c. **STAY-AWAY ORDER**

The restrained person must stay at least (*specify*): _____ yards away from the protected person and the following places:

- (1) The protected person's residence located at (*address*):
- (2) The protected person's place of work located at (*address*):

- (3) The protected person's vehicle (*specify*):
- (4) Other (*specify*):

6. **FIREARMS PROHIBITION AND RELINQUISHMENT ORDER**

(If the abuse alleged in this case is solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse, no firearms prohibition or relinquishment order shall be issued.)

The abuse alleged in this case is not solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse. The restrained person is prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive any firearms, and must surrender to local law enforcement or sell to a licensed gun dealer any firearm in or subject to his or her immediate possession or control within:

- (1) 24 hours after issuance of this order (*if restrained person is present at hearing*).
- (2) 48 hours after service of this order (*if restrained person is not present at hearing*).
- (3) other (*specify*):

If the restrained person owns, possesses, or controls any firearms, he or she must within 72 hours of receiving this order file a receipt with the court showing compliance with this order. (*Form EA-145 may be used for this purpose.*)

7. **NO FEE FOR FILING**

There are no fees for filing the petition and response to these restraining orders.

8. **NO FEE FOR SERVICE OF ORDERS**

Fees for service of this order by law enforcement are waived.

PETITIONER: RESPONDENT:	CASE NUMBER:
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NOTICE REGARDING NONAPPEARANCE AT HEARING AND SERVICE OF ORDER

IF YOU HAVE BEEN PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER AND NOTICE OF HEARING, BUT YOU DO NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND A RESTRAINING ORDER THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY RESTRAINING ORDER, IS ISSUED AT THE HEARING A COPY OF THE ORDER WILL BE SERVED ON YOU BY MAIL AT THE FOLLOWING ADDRESS:

IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CONTACT THE CLERK OF THE COURT.

IF BOTH YOU AND THE PETITIONER ARE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER IS ISSUED, NO ADDITIONAL PROOF OF SERVICE WILL BE REQUIRED.

INSTRUCTIONS FOR THE RESPONDENT

1. If you are served with an *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* [OSC] (form EA-120) and a *Petition for Protective Orders (Elder or Dependent Adult Abuse)* [petition] (form EA-100), you should promptly seek legal advice. If you have no attorney, the attorney referral service of your local bar association may be of assistance.
2. If you wish to respond to or oppose the **petition**, you should file a *Response to Petition for Protective Orders* [response] (form EA-110). An original **response** must be filed with the court and a copy served on the petitioner or the petitioner's attorney. You do not have to pay any fee to file your **response**.

In addition to the **response**, you may file and serve declarations signed by you and other persons who have personal knowledge of the facts. A declaration form (form MC-031) is available from the clerk's office of the court shown on page 1 of this form. If you do not know how to prepare a declaration, you should see an attorney. After you have filed the **response** with the clerk of the court, a copy must be delivered personally or by mail to the petitioner or the petitioner's attorney.

You cannot serve the petitioner yourself. The person who serves the petitioner should complete and sign a *Proof of Service* (form EA-141). You should take the completed form back to the court clerk before the hearing date or bring it with you to the hearing.

3. If you wish to oppose the **petition**, in addition to filing a **response** you should be present at the hearing. If you have any witnesses, they must also be present at the hearing.

Assistive listening systems, computer-assisted real-time-captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civ. Code, § 54.8.)



[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* (CLETS) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> TELEPHONE NO. (<i>Optional</i>): _____ 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 12</h1> <h1 style="margin: 0;">9/13/04</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
RESTRAINING ORDER AFTER HEARING (Elder or Dependent Adult Abuse) (CLETS)	CASE NUMBER:

THIS ORDER, EXCEPT FOR ANY AWARD OF ATTORNEY FEES AND COSTS, WILL EXPIRE AT MIDNIGHT ON (date): _____ . IF DATE IS BLANK, THIS ORDER EXPIRES THREE YEARS FROM THE DATE OF ISSUANCE.

1. This proceeding was heard by judicial officer (*name*): _____
 on (*date*): _____ at (*time*): _____ in Dept.: _____ Room: _____ Div.: _____
2. a. The person seeking to be protected and the person to be restrained were personally present at the court hearing. No additional proof of service of this restraining order is required.
- b. The person seeking to be protected was personally present. Proof of service on the respondent of the *Order to Show Cause* and the *Petition for Protective Orders* was presented to the court.
 - (1) The orders on this form are the same as on form EA-120 except for the end date. This order can be served by mail.
 - (2) The orders on this form are different from those on form EA-120. Someone other than persons seeking to be protected must personally serve a copy of this order on the person to be restrained.
- c. By written stipulation, no additional proof of service of this restraining order is required.

THE COURT FINDS

3. a. The restrained person is (*name*): _____
- b. The description of the restrained person is as follows:

Sex: M F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

4. The protected person is (*name*): _____
5. The residence exclusion order below is supported by the following facts:
 - a. The person to be protected has a legal right to live at the residence located at (*address*): _____
 - b. The person to be protected will suffer physical or emotional harm if the restrained person does not leave the residence.
 - c. Title to or lease of the residence at the address listed above is not in the sole name of the person to be restrained nor is it in the name of the person to be restrained and another person besides the person to be protected.

PETITIONER: RESPONDENT:	CASE NUMBER:
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THE COURT ORDERS

6. PERSONAL CONDUCT ORDER

The restrained person must not:

- (1) abuse, intimidate, molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace of, the protected person.
- (2) telephone or contact directly or indirectly, by mail or otherwise, the protected person.

7. RESIDENCE EXCLUSION ORDER

The restrained person **must** immediately move from and must not return to the residence located at the address listed in item 5a.

8. STAY-AWAY ORDER

The restrained person **must** stay at least (*specify*): _____ **yards** away from the protected person and the following places:

- a. The protected person's residence located at (*address*):

- b. The protected person's place of work located at (*address*):

- c. The protected person's vehicle (*specify*):
- d. Other (*specify*):

9. FIREARMS PROHIBITION AND RELINQUISHMENT ORDER

(If the abuse alleged in this case is solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse, no firearms prohibition or relinquishment order shall be issued.)

The abuse alleged in this case is not solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse. The restrained person is prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive any firearms, and must surrender to local law enforcement or sell to a licensed gun dealer any firearm in or subject to his or her immediate possession or control within

- (1) 24 hours after issuance of this order (if restrained person is present at hearing).
- (2) 48 hours after service of this order (if restrained person is not present at hearing).
- (3) other (*specify*):

If the restrained person owns, possesses, or controls any firearms, he or she **must** file a receipt with the court showing compliance with this order within 72 hours of receiving this order. (*Form EA-145 may be used for this purpose.*)

10. ADDITIONAL ORDERS (*specify*):

11. NO FEE FOR SERVICE OF ORDER

Fees for service of this order by law enforcement are waived.

PETITIONER: RESPONDENT:	CASE NUMBER:
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12. **DELIVERY TO LAW ENFORCEMENT**

A copy of this order and any proof of service must be given to the law enforcement agencies listed below by the following means:

- a. the protected person must deliver.
- b. the protected person's attorney must deliver.
- c. the clerk of the court must mail.

Law Enforcement Agency

Address

Date: _____

JUDICIAL OFFICER

NOTICE REGARDING ENFORCEMENT OF THIS ORDER

This order is effective when made. The law enforcement agency shall enforce the order immediately upon receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If proof of service on the restrained person has not been received, the law enforcement agency must advise the restrained person of the terms of the order and then enforce it.

Violation of this order is a misdemeanor, punishable by a \$1,000 fine, one year in jail, or both. This order must be enforced by all law enforcement officers in the state of California.

NOTICE REGARDING FIREARMS

Unless the abuse in this case is solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse, the restrained person is prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive any firearm. Any such conduct is subject to a \$1,000 fine and imprisonment. You must sell any guns or firearms that you have under your control to a licensed gun dealer or turn them over to law enforcement in accordance with item 9 above.

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing *Restraining Order After Hearing (Elder or Dependent Adult Abuse) (CLETS)* is a true and correct copy of the original on file in the court.

Date:

Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO. <i>(Optional):</i> FAX NO. <i>(Optional):</i> E-MAIL ADDRESS <i>(Optional):</i> ATTORNEY FOR <i>(Name):</i>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt;">DRAFT 2</p> <p style="text-align: center; font-size: 24pt;">8/10/04</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PROOF OF SERVICE BY MAIL (Elder or Dependent Adult Abuse)	CASE NUMBER:

Instructions to Respondent: After having the petitioner served by mail with any of the documents identified in item 1, have the person who mailed the documents complete this *Proof of Service by Mail*. You cannot serve the documents. Give the completed *Proof of Service by Mail* to the clerk for filing. An unsigned copy of the *Proof of Service by Mail* should be attached to and served with the documents.

1. I served a copy of the following documents:
 - a. Completed *Response to Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-110)
 - b. Other *(specify):*

2. I deposited a true copy of each of the foregoing documents in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
 - a. Name of person served:
 - b. Address:

 - c. Date of mailing:
 - d. Place of mailing:

3. At the time of service I was over the age of 18 and not a party to this legal action. I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify):*

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 OF PERSON WHO SERVED THE PAPERS)

▶

 (SIGNATURE OF PERSON WHO SERVED THE PAPERS)

INSTRUCTIONS

ON PETITION FOR A PROTECTIVE ORDER TO PREVENT ELDER OR DEPENDENT ADULT ABUSE

DRAFT 7
9-13-04

INSTRUCTIONS FOR THE PETITIONER

1. **Where to file**

A petition for a protective order must be filed in the superior court either in the county where the abuse occurred or in the county where the defendants, or some of them, reside at the time the petition is filed.

2. **Who may be protected by the orders?**

An elder or a dependent adult who has suffered abuse as defined in Section 15610.07 of the California Welfare and Institutions Code may be protected by the orders. Under Section 15610.07, "abuse of an elder or a dependent adult" means either:

- a. Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
- b. The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

3. **Who can petition for the orders?**

The person to be protected, the conservator of the person to be protected, or a guardian ad litem appointed by the court to represent the person to be protected can file a petition.

4. **What forms are required?**

Prepare an original of each of the following forms and, once completed, make **at least two copies** of each:

Form EA-100, *Petition for Protective Orders*

Form EA-120, *Order to Show Cause and Temporary Restraining Order*

Forms are available at the court clerk's office or through legal publishers. Forms are also available on the California Courts Web site at www.courtinfo.ca.gov/forms.

The forms may be filled out on a computer, typed, or handwritten or handprinted. If you have access to the Internet, fillable forms are available on the California Courts Web site. Most libraries and some women's shelters and volunteer legal service groups have computers that you may use. If you handwrite your forms, print clearly.

You will need one copy of the temporary restraining order for each law enforcement agency and others who will help enforce the order and two copies for yourself. Thus, if you want to give copies of the court orders to three law enforcement agencies, you will need at least **five** copies of your forms. Bring the original and all copies to court to present to the court clerk.

5. **Judicial signature**

The court clerk will tell you where to take your documents for judicial signature.

6. **Filing fee, filing, and hearing date**

The *Petition for Protective Orders* (form EA-100) and the *Order to Show Cause and Temporary Restraining Order* (form EA-120) must be presented to the court. There is no fee for filing these documents. The court will provide a hearing date, which will be inserted in the order. When you file these documents, you should ask the court clerk to file-stamp your copies.

7. **Delivery of the temporary restraining order to law enforcement**

You should ensure that each order is delivered to the appropriate law enforcement agencies so that the orders will be enforced. Check with the court clerk to find out how to deliver an order.

8. Personal service requirements

The law requires that the person from whom you wish to be protected must be personally **served** this notice that you have filed for a restraining order. The judge cannot make any orders at the hearing unless and until the person from whom you wish to be protected has been properly served.

Once you have obtained a signed order, the original petition and order have been filed with the court, and you have received your filed-stamped copies from the court clerk, you must have the respondent—the person from whom you wish to be protected—personally **served** with a filed-stamped copy of the *Petition for Protective Orders* (form EA-100), a filed-stamped copy of the *Order to Show Cause and Temporary Restraining Order* (form EA-120), and a blank *Response to Petition for Protective Orders* (form EA-110). These papers must be **served** at least two days before the hearing date, unless the court has provided another time for completing service.

"**Serve**" is a legal term which means that your completed forms must be personally delivered to the person from whom you wish to be protected. Neither the protected person nor the petitioner (if that is someone other than the protected person) may serve the papers on the other party. Service may be made by a licensed process server, the sheriff's department, or any person 18 years or older who is not a party to the case.

If you hire a professional process server, you must pay for this service. It is helpful to give the process server a picture of the person from whom you wish to be protected and a list of times and places when it will be easier to find that person to serve the forms.

You may not have to hire a process server to have the court forms served on the person from whom you wish to be protected. For instance, if you cannot afford to pay, you may file a fee waiver application with the court. (If you want to apply for a fee waiver, see *Application for Waiver of Court Fees and Costs* (form 982(a)(17); *Information Sheet on Waiver of Court Fees and Costs* (form 982(a)(17)(A); and *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18).) The judge may waive your fees so that the sheriff or marshal will serve your papers for free. If the person from whom you wish to be protected is in jail, there is no fee to have the person served.

9. Proof of service requirements

After the restrained person has been personally served, the individual who served the papers on that person must complete and sign a *Proof of Personal Service* (form EA-140) (for personal service)). The original proof of service must be filed with the court before the hearing. Keep copies for yourself.

10. Bring documents to the court hearing

Bring copies of all documents you have filed with the court, including your *Proof of Personal Service* form, to the court hearing. In addition, complete and bring with you a completed copy of the *Restraining Order After Hearing* (form EA-130) for the judge's signature at the hearing.

11. After the hearing

a. Filing the signed restraining order after the hearing

At or after the hearing, the *Restraining Order After Hearing* (form EA-130) may be modified to reflect the judge's orders. Ask the judge or court clerk how to obtain the judge's signature on the final order. After the judge signs the order, make **at least two copies**. File the original with the court clerk and ask the court clerk to file-stamp the copies for you.

b. Delivery of the signed restraining order

You should ensure that the order is delivered to the law enforcement officials that you would like to have enforce the order. Check with the court clerk to find out how to deliver the order.

c. Serving the signed restraining order

If the respondent—the person from whom you wish to be protected—was not present in court at the court hearing, you should arrange to have the respondent personally served with a filed-stamped copy of the *Restraining Order After Hearing* (form EA-130).

d. Proof of service of the signed restraining order

After the restrained person has been served, the person who served the papers must complete and sign a *Proof of Personal Service* (form EA-140). The original must be filed with the court. Keep copies for yourself.

INSTRUCTIONS FOR THE RESPONDENT

1. If you are served with an *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* (form EA-120) and a *Petition for Protective Orders (Elder or Dependent Adult Abuse)* (form EA-100), you should promptly seek legal advice. If you have no attorney, the attorney referral service of your local bar association may be of assistance.
2. If you wish to respond to or oppose the petition, you should file a *Response to Petition for Protective Orders* (form EA-110). Forms are available at the court clerk's office, from legal publishers, and in fillable form on the California Courts Web site at www.courtinfo.ca.gov/forms. An original response must be filed with the court and a copy served on the petitioner or the petitioner's attorney. You do not have to pay any fee to file your response.

In addition to the response, you may file and serve declarations signed by you and other persons who have personal knowledge of the facts. A declaration form (form MC-031) is available from the court clerk's office. If you do not know how to prepare a declaration, you should see an attorney. After you have filed the response with the clerk of the court, a copy must be delivered personally or by mail to the petitioner or the petitioner's attorney.

You cannot serve the petitioner yourself. The person who serves the petitioner must complete and sign a *Proof of Personal Service* (form EA-140) (for personal service) or *Proof of Service by Mail* (form EA-141) (for service by mail). You should file the completed form with the court clerk before the hearing date or bring it with you to the hearing.

3. If you wish to oppose the petition, in addition to filing a response you should be present at the hearing. If you have any witnesses, they must also be present at the hearing.
4. If the court orders you to relinquish firearms, you must sell all your firearms to a licensed gun dealer or relinquish them to a law enforcement agency. You must file a receipt showing that you have sold or relinquished the firearms within 72 hours of receiving the order. You may use *Proof of Sale or Turning In of Firearms* (form EA-145) for this purpose.

Requests for Accommodation

Assistive listening systems, computer-assisted real-time-captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civ. Code, § 54.8.)



SP04-07
Elder and Dependent Adult Abuse Prevention
(revise forms EA-100, EA-110, EA-120, EA-130, EA-140, EA-141, and EA-150)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Sandy Almansa Supervising Legal Clerk II Superior Court of California County of Stanislaus Modesto, California	A	N	I believe these forms should also be considered for “plain language” format in future revisions.	The committee intends to consider this.
2.	Kim Hubbard President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response required.
3.	Valerie Fercho-Tillery Manager, Domestic Violence Restraining Order System Department of Justice Sacramento, California	AM	N	<p>Before commenting on the forms, I would like to request the Elder Abuse that is financial only have a separate form. I believe it will be much clearer to all parties concerned if the forms are separate. Elder abuse that is financial only has no firearm restrictions. All other forms of elder abuse have firearm restrictions. I already know the court will check the firearm prohibition and relinquishment box on financial only orders and will not check it on other than financial abuse orders. By having a separate order form for financial abuse, the confusion should be minimal for the protected person, restrained person, court staff and law enforcement. DOJ will work with AOC on this matter so that DOJ approval can be placed at the bottom of the EA-120 and EA-130.</p> <p><u>Form EA-100:</u> Remove the word CLETS from all pages of the petition. It is unnecessary as the information from the petition is not entered into the Domestic Violence</p>	<p>The advisory committee may consider developing separate forms for cases of elder abuse involving only financial abuse, particularly if legislation on this subject is enacted. But for the present, the current set of forms that is designed for elder and dependent adults to seek protective relief should be retained.</p> <p>The committee agreed.</p>

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

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>Restraining Order System (DVROS) via CLETS.</p> <p>Page 1:</p> <ul style="list-style-type: none"> • At the bottom of the page, change the wording “This Is Not An Order” to match petitions for other orders that say, “This Is Not A Court Order.” Place the wording in a black box similar to the DV forms. • At the bottom of the page, the wording “Optional Use” should be changed to “Mandatory Use.” <p>Page 2:</p> <ul style="list-style-type: none"> • Remove the check boxes and wording “To be ordered now and to remain in effect until the hearing” from items 7, 8 and 9. This wording is unnecessary as there is a separate temporary restraining order form. • In item 8, add check boxes to “b” (1), (2), and (3). There is already a check box on 4, but none of the others. • In item 10, the “yes” and “no” check boxes need to be moved down from item 9. <p>Page 4:</p>	<p>The committee agreed that the wording should be changed, but retained the standard format.</p> <p>The committee agreed that the form should be mandatory.</p> <p>The committee disagreed. This provision enables the petitioner to request temporary orders.</p> <p>The committee agreed in part. There should not be a check box before b(3) (moved to b(1)) because the facts in this item must be shown in order for the court to grant a residence exclusion order. (See Welf. & Inst. Code, § 15657.03(b)(2).)</p> <p>This has been corrected.</p>

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				<ul style="list-style-type: none"> • In the “Please note . . .” box, add a referral to form EA-150 for further information. <p><u>Form EA-110:</u> Remove the word CLETS from all pages of the response. It is unnecessary as the information from the response is not entered into DVROS.</p> <p>Page 1:</p> <ul style="list-style-type: none"> • At the bottom of the page, the wording “Optional Use” should be changed to “Mandatory Use.” <p><u>Form EA-120:</u></p> <ul style="list-style-type: none"> • At the bottom of all 4 pages, add the wording “This Is A Court Order.” Place the wording in a black box similar to the DV forms. <p>Page 1:</p> <ul style="list-style-type: none"> • In the “A court hearing has been set. . .” box, the first word in the last sentence needs to be capitalized. • Item 4, add check boxes for male/female and an optional date of birth area. The sex of the protected person is mandatory for entry into DVROS. The date of birth of the protected person is mandatory for entry into NCIC's national protection order database. • At the bottom of the page, the wording 	<p>This is not necessary.</p> <p>The committee agreed.</p> <p>The committee agreed that the form should be mandatory.</p> <p>The committee agreed that the wording should be changed, but retained the standard format.</p> <p>This correction has been made.</p> <p>This is not necessary for the protected person.</p>

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				<p>“Optional Use” should be changed to “Mandatory Use.”</p> <p>Page 2:</p> <ul style="list-style-type: none"> • In item 5c(2), remove the word “is” so the order reads, “The protected person's place of work located at.” • Under item 6, if a separate form for financial abuse only is created, remove the check box and all wording regarding no firearm prohibitions. • Under 10b, add “10” in front of “c” so the order reads, “The documents listed in 10c must be” <p>Page 3:</p> <ul style="list-style-type: none"> • Add a “10” prior to c at the top of the page. • Under 10c 1, remove (CLETS). • Under 10d, remove the wording “served and.” The order should read, “Proof of service of the documents must be filed with the court before the hearing.” • Under “Important Information” box, the first word in the second line should be “Elder” not “Eider.” 	<p>The committee agreed that this form should be mandatory.</p> <p>This change has been made.</p> <p>No separate form is being adopted at this time.</p> <p>The committee agreed.</p> <p>The committee agreed.</p> <p>The committee agreed.</p> <p>The committee agreed.</p> <p>The committee agreed and corrected this typographical error.</p>

SP04-07
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(revise forms EA-100, EA-110, EA-120, EA-130, EA-140, EA-141, and EA-150)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<ul style="list-style-type: none"> • Under “Notice Regarding Enforcement” box, the last sentence of the first paragraph would be easier to understand if instead of “... the law enforcement agency shall advise...” it read “The law enforcement officer shall verbally advise the restrained person of the terms of the order and enforce it, pursuant to W&I section 15657.03(j)(4).” • Under “Notice Regarding Firearms” box, add “You must sell to a licensed gun dealer or turn into police any guns or firearms that you have or control. The judge will ask you for the proof that you did so.” <p><u>Form EA-130:</u> At the bottom of all 3 pages, add the wording “This Is a Court Order.” Place the wording in a black box similar to the DV forms.</p> <p>Page 1:</p> <ul style="list-style-type: none"> • Under item 2b, change the wording to be more understandable for everyone including law enforcement. Change it to be similar to the DV 130. b. (check box) The protected person was at the hearing. The restrained person was not. But Proof of Service was presented to the court. <p>“(1) (check box) The judge's orders in this form are the same as the EA-120 except for</p>	<p>The committee disagreed. It retained the current language, which it believes is clearer.</p> <p>The committee agreed that the first sentence should be added, but not the second (which is unnecessary and may be inaccurate).</p> <p>The committee did not think this is necessary; it is clear that the document is an order.</p> <p>The committee agreed that these changes should be made and has modified item 2.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>the end date. This order can be served by mail.</p> <p>“(2) (check box) The judge's orders in this form are different from the EA-120. Someone, not the protected person(s) must personally serve a copy of this order to the restrained person.”</p> <ul style="list-style-type: none"> • Item 4, add check boxes for male/female and an optional date of birth area. The sex of the protected person is mandatory for entry into DVROS. The date of birth of the protected person is mandatory for entry into NCIC's national protection order database. • Under 5, remove the check box after 5 and place check boxes after 5 a, b and c. • At the bottom of the page, the wording “Optional Use” should be changed to “Mandatory Use.” <p>Page 2:</p> <ul style="list-style-type: none"> • Under item 9: If a separate form for financial abuse only is created, remove the check box and all wording regarding no firearm prohibitions. • Under item 12: Change the wording “Service of Orders on Law Enforcement” to match the 	<p>This is not necessary for the protected person.</p> <p>The box is correctly located after 5. (See Welf. & Inst. Code, § 15657.03(b)–(e).)</p> <p>The committee agreed that the form should be mandatory.</p> <p>No separate form is being created at this time.</p>

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(revise forms EA-100, EA-110, EA-120, EA-130, EA-140, EA-141, and EA-150)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p style="text-align: center;">EA-120 “Delivery to Law Enforcement.”</p> <p>Page 3:</p> <ul style="list-style-type: none"> • Under “Notice Regarding Enforcement” box, the last sentence of the first paragraph would be easier to understand if instead of “. . . the law enforcement agency shall advise. . .” change to “The law enforcement officer shall verbally advise the restrained person of the terms of the order and enforce it, pursuant to W&I section 15657.03(j)(4).” • Under “Notice Regarding Firearms” box, add “You must sell to a licensed gun dealer or turn into police any guns or firearms that you have or control. The judge will ask you for the proof that you did so.” <p><u>Form EA-150:</u></p> <p>Page 1:</p> <ul style="list-style-type: none"> • Under item 2b, change the wording “The deprivation of a care custodian” to “The deprivation by a care custodian.” • Under item 7, change the wording “You should ensure that each order is delivered to the appropriate law enforcement agencies so that the orders will be enforced” to “You should ensure that the order is delivered to law enforcement.” The current language is misleading. It appears that law enforcement 	<p>This change has been made.</p> <p>The committee disagreed. It has left the language as it was because this language is clearer.</p> <p>The committee agreed that the first sentence should be added, but not the second.</p> <p>This change has been made.</p> <p>The committee disagreed; it regarded the existing language as clearer and not misleading.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>will only enforce the order if they have a hard copy. This is not true.</p> <p>Page 2:</p> <ul style="list-style-type: none"> • Under item 9, the sentence “Keep copies for yourself” should end right there. According to Family Code section 6380(d)(1) & (2), delivery of proof of service is the job of the court or the law enforcement agency that served the order . . . not the protected person. • Under item 11b, change the wording “You should ensure that each order is delivered to the appropriate law enforcement agencies so that the orders will be enforced” to “You should ensure that the order is delivered to law enforcement.” The current language is misleading. It appears that law enforcement will only enforce the order if they have a hard copy. This is not true. • Under item 11c, remove the last sentence, “If the respondent was present in court at the court hearing, you can have the respondent served by mail.” There is no need for additional proof of service if the respondent was present in court. <p>Page 3:</p> <ul style="list-style-type: none"> • Under d, the paragraph should end with the sentence, “Keep copies for yourself.” 	<p>The committee agreed and deleted the rest of the paragraph.</p> <p>The committee disagreed; it regarded the existing language as clearer and not misleading.</p> <p>This sentence has been deleted.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				According to Family Code section 6380(d)(1) & (2), delivery of proof of service is the job of the court or the law enforcement agency that served the order . . . not the protected person.	The committee agreed.
4.	Scott Jones Court Program Manager Family Mediation Superior Court of California, County of Ventura Ventura, California	AM	N	<p><u>Form EA-100:</u> Item 11: Second sentence, “the abuse in this case is not solely financial....” The sentence uses double negatives and is unclear. A serious issue such as surrendering firearms requires clarity. Suggest creating boxes with affirmations. Statements separating the issues as:</p> <p>“In this case there is both financial abuse and other forms of abuse.”</p> <p>“In this case there is no financial but other abuse” with a disclaimer: If there is financial abuse and no other form of abuse, Item 11 does not apply.”</p>	The sentence accurately reflects the language of the statute and has been retained.
5.	Martha McLaughlin CSA-IV Superior Court of California, County of Ventura Ventura, California	AM	N	There is a typographical error on form EA-150, item 11b.	This has been corrected.

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6.	Christina Pappas Editor LexisNexis San Francisco, California	AM	N	<u>Form EA-120:</u> On page 2, item 1, in the box labeled “IMPORTANT INFORMATION FOR RESTRAINED PERSON,” Elder is spelled Eider.	This typographical error has been corrected.
7.	Leonard Sacks Attorney Granada Hills, California	AM	N	See comment to item SP04-06.	See response to comment on SP04-06.