

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
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DATE: October 1, 2004

SUBJECT: Elder Abuse and Workplace Violence: *Proof of Sale of Firearms/*
Turning In of Firearms (revise, renumber, and rename form CH-145/
EA-145/WV-145) (Action Required)

Issue Statement

To assist in the implementation of the recently enacted firearms relinquishment legislation, the Judicial Council approved a form for proof of sale of firearms to a licensed gun dealer or turning in firearms to law enforcement. *Proof of Sale of Firearms/Turning In of Firearms* (form CH-145/EA-145/WV-145) became effective July 1, 2004, for use where the court has issued a firearms relinquishment order in a case involving civil harassment, elder or dependent adult abuse, or workplace violence.

Because all of the civil harassment forms are being revised to be in plain language versions, there will be a separate, new plain language version of form CH-145.¹ Thus, the existing form for proof of firearms relinquishment should be revised and renumbered to apply only to elder and dependent adult abuse and to workplace violence prevention cases. This form should also be renamed *Proof of Sale or Turning In of Firearms*.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise, renumber, and rename *Proof of Sale of Firearms/Turning In of Firearms* (form CH-145/EA-145/WV-145) so that it applies only to elder and dependent adult abuse and workplace violence cases and incorporates minor technical revisions.

¹ This form is considered in a Judicial Council report on the proposed plain-language civil harassment forms.

Revised, renumbered, and renamed form EA-145/WV-145 is attached at pages 4 and 5.

Rationale for Recommendation

Recent legislation changed the law regarding firearms relinquishment in elder and dependent adult abuse, civil harassment, and workplace violence cases. Senate Bill 226 added new section 527.9 to the Code of Civil Procedure, which provides that persons subject to temporary restraining orders and injunctions in such cases must relinquish firearms. A person ordered to relinquish a firearm must “file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours of receiving the order.” (Code Civ. Proc., § 527.9(b).)

To facilitate the implementation of this provision, in the spring of 2004 a new Judicial Council form was developed for use by persons subject to firearms relinquishment orders in civil harassment, elder and dependent adult abuse, and workplace violence cases to provide proof to the court that their firearms had either been sold to a licensed gun dealer or turned over to law enforcement. The form contains places where a dealer can declare that the listed firearms were sold or a law enforcement agent can declare the firearms were turned in. It also provides a description of the make, model, and serial number of all firearms that were relinquished.

To make the form available as soon as possible, the council approved it effective July 1, 2004. However, it was also circulated in the spring of 2004 so that the public could comment on it.

The form should now be further revised. Specifically, a separate, new version for use in civil harassment prevention cases should be approved along with the other plain-language civil harassment forms. The current, standard-format form for proof of firearms relinquishment should be revised and renumbered for use only in elder and dependent adult abuse and workplace violence prevention cases.

Alternative Actions Considered

The form could be left unchanged. However, if the plain-language civil harassment forms are adopted, it would be clearer and easier for litigants to have a plain-language version of the form available as part of the set of plain-language civil harassment forms. The current form should be revised and renumbered to apply only to elder abuse and workplace violence prevention cases, which use Judicial Council forms in the standard format.

Comments From Interested Parties

The current form was circulated in the spring of 2004. A total of nine comments were received on this form and were generally supportive. The commentators included

attorneys and court administrators. A chart summarizing the comments and the committee's responses is attached at pages 6 and 7.

The invitation to comment on this form specifically raised the question whether it should be optional or mandatory. The Civil and Small Claims Advisory Committee recommends that it remain optional. The statute only requires filing a receipt showing the relinquishment of firearms; hence, a person who complies with this requirement by the filing of such a receipt should satisfy the law, even if he or she does not or cannot for some reason file a completed version of form EA-145/WV-145. So the use of this form should not be required. However, it should be available to assist persons subject to firearms relinquishment orders to comply with the law.

Implementation Requirements and Costs

There will be some incidental costs from replacing the current version of the form with a revised version. However, having specific versions of this form for use in different types of cases will make it easier for litigants to use.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i>: _____</p> <p style="text-align: center;">E-MAIL ADDRESS <i>(Optional)</i>: _____</p> <p style="text-align: center;">ATTORNEY FOR <i>(Name)</i>: _____</p>	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT 9</h2> <h2 style="margin: 0;">09/10/04</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
PROOF OF: <input type="checkbox"/> SALE OF FIREARMS <input type="checkbox"/> TURNING IN OF FIREARMS	JUDGE: DEPT.:

(Instructions: When you sell or turn in your firearms under a court order, ask the licensed gun dealer or law enforcement agent to complete item 2a or 2b. After the form is signed, you must file the completed form with the court clerk. Keep a copy.)

1. **Defendant or respondent** *(name)*:
 has
 a. sold to a licensed gun dealer the firearms described in item 3
 b. turned over to law enforcement the firearms described in item 3.
2. The firearms described in item 3 were sold or turned in as follows:

<p>a. <input type="checkbox"/> SALE OF FIREARMS TO LICENSED DEALER <i>(To be completed by licensed gun dealer)</i> The firearms listed in item 3 were sold:</p> <p>(1) On <i>(date)</i>: _____ (2) At <i>(time)</i>: <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.</p> <p>(3) To <i>(name of licensed gun dealer)</i>: _____</p> <p>(4) License number: _____</p> <p>(5) Address: _____</p> <p>(6) Telephone number: _____</p> <p>I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.</p> <p>Date: _____</p> <hr style="border: 0; border-top: 1px solid black; margin-top: 20px;"/> <div style="display: flex; justify-content: space-between;"> (TYPED OR PRINTED NAME OF LICENSED GUN DEALER) (SIGNATURE OF LICENSED GUN DEALER) </div>

PLAINTIFF (Name): DEFENDANT (Name):	CASE NUMBER:
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b. **TURNOVER OF FIREARMS TO LAW ENFORCEMENT**
(To be completed by law enforcement agent)
 The firearms listed in item 3 were turned in:

(1) On *(date)*: _____ (2) At *(time)*: a.m. p.m.

(3) To *(name and title of law enforcement agent)*: _____

(4) Name and address of law enforcement agency: _____

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

Date: _____

(TYPED OR PRINTED NAME OF LAW ENFORCEMENT AGENT)	(SIGNATURE OF LAW ENFORCEMENT AGENT)
(TITLE)	

FIREARMS SOLD OR TURNED OVER

3. The firearms sold to the licensed dealer or turned in to the law enforcement agency indicated above were the following:

Firearm Make	Model	Serial Number
(1)		
(2)		
(3)		
(4)		
(5)		

Additional firearms are listed on Attachment 3 to this form. *(The make, model, and serial number of each firearm must be provided.)*

4. The firearms listed in item 3 are:

- a. All firearms that the defendant or respondent owns, possesses, or controls. The defendant no longer owns, possesses, or controls any firearms.
- b. Some of the firearms that the defendant or respondent owns, possesses, or controls. If this item is checked, all of defendant's or respondent's other firearms:
 - (1) Have been sold or transferred and proof of sale or transfer was filed with this court on *(date)*:
 - (2) Have been sold or transferred and proof of sale or transfer is filed with the court at the same time that this *Proof* is filed.
 - (3) Have not yet been sold or transferred *(explain)*:

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

Date: _____

(TYPED OR PRINTED NAME OF DEFENDANT OR RESPONDENT)	(SIGNATURE OF DEFENDANT OR RESPONDENT)
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SPR04-05
Proof of Sale of Firearms/Turning in of Firearms
(revise, renumber and rename form EA-145/WV-145)

	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	No comment.	No response required.
2.	Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura Ventura, California	A	N	Agree with proposed changes.	No response required.
3.	Kim Hubbard President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response required.
4.	Peggy Kelly and Valerie Fercho-Tillery Field Representative/DVROS Manager California Department of Justice Sacramento, California	AM	N	Page 1, number 1: Change Defendant/Respondent to Defendant/Restrained Person. Page 2, number 4a and b: Change respondent to restrained person in all instances. This form may be used in conjunction with the civil harassment forms, which are changing to plain language; therefore, respondent should be restrained person.	On revised and renumbered form EA-145/WV-145, which continues to be in the standard format for Judicial Council forms, the party designation should remain unchanged. However, on the separate, new plain-language form CH-145 adopted for use in civil harassment cases, the language “restrained person” will be used.
5.	Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego, California	AM	Y	The following comment was received from our court managers: Good form.	No response required.

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

SPR04-05
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6.	Mary Majich Davis Chief Deputy Executive Officer Superior Court of California, County of San Bernardino San Bernardino, California	A	N	Agree with proposed changes.	No response required.
7.	Adrienne M. McMillan Staff Attorney Superior Court of California, County of San Francisco San Francisco, California	N	N	This would just provide one more way for the litigant to mess up service. Bad idea; not to mention, end the revenue.	The commentator appears to misunderstand the purpose of this form. It is designed to facilitate proof of sale or turning in of firearms; it does not relate to service of document.
8.	Leonard Sacks Attorney Granada Hills, California	AM	N	Helps enforce order. However, absent a search, it is hard to be certain that all firearms were relinquished.	The comment is noted.
9.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of California, County of Nevada Nevada City, California	AM	N	I agree that proof of firearm relinquishment is a good thing in appropriate cases. I think that there should be some temporary way to turn over firearms. The two options now proposed appear to be permanent. If this order only lasts 1–3 years, a way to return the firearms should be offered.	The proposal, which would require legislation, goes beyond the scope of this proposal regarding a form to implement current law.

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