

**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: Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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DATE: October 2, 2009

SUBJECT: Juvenile Law: Affidavit Under Penalty of Perjury (revise form JV-210)
(Action Required)

Issue Statement

Concerns were expressed that the *Application to Commence Proceedings by Affidavit and Decision by Social Worker* (form JV-210) does not qualify as an affidavit as required under section 329 of the Welfare and Institutions Code because the affiant is not required to sign the declaration under penalty of perjury. The proposed amendments are necessary to promote compliance with that section and Code of Civil Procedure section 2015.5 and ensure that form JV-210 serves as a valid affidavit. Various technical and clarifying changes to the form are also proposed.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2010,¹ amend form JV-210, *Application to Commence Proceedings by Affidavit and Decision by Social Worker*, to comply with current statutory mandates and ensure that the form serves as a valid affidavit.

The proposed form JV-210 is attached at pages 5–6.

Rationale for Recommendation

Current form JV-210 is intended to meet the requirements for an application to commence proceedings, as described in Welfare and Institutions Code section 329. Section 329 states that “[w]henever any person applies to the social worker to commence

¹ The proposed effective date of the revised forms is July 1, 2010. To give courts additional time to implement any necessary changes by this effective date, including making any necessary changes to computerized case management systems, the proposal needs to be considered by the Judicial Council at its October meeting.

proceedings in the juvenile court, the application shall be *in the form of an affidavit* alleging that there was or is within the county, or residing therein, a child within the provisions of Section 300, and setting forth facts in support thereof” (emphasis added). Under section 2015.5 of the Code of Civil Procedure, when a matter is required to be supported or evidenced by affidavit, the affiant must certify that his or her declaration is “true under penalty of perjury, is subscribed by him or her, and . . . if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California.”

Current form JV-210 requires the person bringing the child to the attention of the social services agency to provide information supporting his or her allegation and belief that a child is at risk of abuse or neglect and should come within the jurisdiction of the juvenile court. The affiant must sign and date the declaration. Form JV-210 also requires the county child welfare social worker to indicate, after considering the application, whether he or she intends to commence juvenile proceedings based on the allegations, and to sign and date the form, verifying that he or she is a social worker of the county in which the application was submitted and duly authorized to make such a decision.

At issue is whether current form JV-210 constitutes an affidavit under Code of Civil Procedure section 2015.5 given that the affiant is not signing the declaration under penalty of perjury. To ensure that form JV-210 is a valid affidavit, as required by section 329, the committee proposes adding language to the form, above the signature line, stating, “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

The committee further recommends making various technical and clarifying changes to improve the organization of the form, including changing the language in the applicant portion of the form to the first person so that it is clear who should provide the information and adding an item for the social worker to include identifying information, including his or her name, agency, address, and telephone number. These proposed changes were not circulated for public comment, but they are minor changes and unlikely to create controversy. Under rule 10.22(d)(2) of the California Rules of Court, the changes may be recommended for adoption without circulation.

Alternative Actions Considered

The proposed amendments are necessary to bring this form into compliance with governing law and to promote clarity and ease of use. No alternative actions were considered.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 17, 2009, through June 17, 2009, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes judges, court administrators, attorneys, social workers, probation officers, mediators, and other family

and juvenile law professionals. A total of nine comments were received. Only one commentator disagreed with the proposal; five commentators agreed with the proposed changes; three commentators did not indicate agreement or disagreement.

The commentator who disagreed with the proposal expressed concern that revealing the identity of the person reporting possible child abuse could expose that person to retaliation and harm from the suspected child abuser, noting that anyone may report a concern of possible child abuse to the Children and Family Services hotline without revealing his or her identity. This commentator believes that the proposal will reduce the number of people willing to step forward and report their concerns to Child Protective Services.

Under section 329, when a person applies to the social worker to commence proceedings in the juvenile court, the application must be in the form of an affidavit, which, by definition, requires a signature and a sworn statement, thus revealing the affiant's identity. While it may be appropriate for someone to anonymously contact the Children and Family Services hotline to report abuse, the issue in this proposal is ensuring that form JV-210 complies with current legal mandates. The proposed changes to form JV-210 have no impact on an individual's ability to anonymously report child abuse to a child abuse hotline.

Of the three commentators who did not indicate any position on the proposal, one did not submit narrative comments requiring a committee response. Another expressed general concern about the number of existing forms and the cumulative impact that new proposed forms will have. He also expressed concern that mandatory plain language forms, designed for pro pers, do not work as well as standard pleadings in his practice as an attorney. This comment does not specifically pertain to proposed form JV-210, and a committee response is not necessary.

The third commentator suggested alternative clarifying language. This commentator stated that, while he agrees that form JV-210 should include "under penalty of perjury" language, such language contradicts the language of item 3 of the form circulated for comment. Under item 3, the affiant is alleging abuse or neglect based on "information and belief," which is far different from "under the penalty of perjury." As proposed, the affiant would be declaring under penalty of perjury that he or she believes that the information being provided is true (and not that the information he or she is providing is true and correct). The commentator therefore suggested language such as "under the penalty of perjury to the best of my knowledge and belief."

The committee agrees to eliminate the words "information and belief" from the form. As circulated for public comment, this language was included in item 3 of the form. The committee proposes restructuring the form to incorporate the rest of the language in item 3 (as circulated for public comment) into new item 1 and further clarify that the affiant is alleging that the child is currently abused or neglected or at risk of abuse and neglect as

described in section 300 of the Welfare and Institutions Code. It is unnecessary to add language to the penalty of perjury statement at the bottom of the form because the words “information and belief” have been removed from item 3, and there is no longer contradictory language in the form that would require clarification in the penalty of perjury statement. For the application to constitute an affidavit under section 2015.5 of the Code of Civil Procedure, the affiant must certify that his or her declaration is true under penalty of perjury.

The full text of the comments and the committee’s responses is attached at pages 7–9.

The text of Welfare and Institutions Code section 329 is attached at page 10.

The text of the Code of Civil Procedure section 2015.5 is attached at page 11.

Implementation Requirements and Costs

Implementation of the revised form will incur standard reproduction costs.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and mailing address): _____ TELEPHONE NO. (Optional): _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;">Draft 12 09/08/09 xyz Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
APPLICATION TO COMMENCE PROCEEDINGS BY AFFIDAVIT AND DECISION BY SOCIAL WORKER (Welf. & Inst. Code, § 329)	CASE NUMBER:

To the social worker or social services agency of (specify county):

1. I allege that the child described below is being abused or neglected or at risk of abuse or neglect as defined in Welfare and Institutions Code section 300. I request that the social worker or agency immediately begin proceedings in the juvenile court on behalf of the child described below.

2. My name and address:

3. My relationship to the child described below (specify):

4. I am providing the following information about the child.

- a. Child's name:
- b. Age:
- c. Date of birth:
- d. Sex:
- e. Mother's name:
- f. Mother's address:
- g. Father's name:
- h. Father's address:
- i. Other (state name, address, and relationship to child):

5. The child described in item 4 above

- a. resides within this county.
- b. was in this county at the time of the facts alleged below.

6. Facts in support (state supporting facts concisely and include all known and relevant dates, times, names, and addresses. Attach separate pages as necessary):

See attachment 6. Number of pages attached: _____

7. 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 APPLICANT)

CHILD'S NAME: 	CASE NUMBER:
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DECISION OF SOCIAL WORKER OR SOCIAL SERVICES AGENCY

8. Social worker information:

- a. Name:
- b. Agency:
- c. Address:
- d. Telephone number:

9. After consideration of the application above, the SOCIAL WORKER HAS DECIDED

- a. to commence proceedings in juvenile court on these allegations.
- b. not to commence proceedings in juvenile court on these allegations because (*specify*):

See attachment 9. Number of pages attached: _____

10. I declare I am a social worker of the county in which this application was submitted and am duly authorized to make this decision.

Date:

(TYPE OR PRINT NAME)

▲ _____
(SIGNATURE OF SOCIAL WORKER)

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Kern County Department of Social Services Monique Hawkins	A	No narrative comments submitted.	No response required.
2.	Michael Markel Supervising Deputy County Counsel San Bernardino County Counsel	NI	Although I agree that the affidavit (JV-210) should include “under the penalty of perjury” language, such language contradicts the language of item 3 on the form. Under item 3, the applicant is alleging abuse or neglect based on “information and belief” which is far different than “under the penalty of perjury.” In essence, the applicant would be declaring under penalty of perjury that they believe the information they are providing is true (and not that the information they are providing is true and correct). I would suggest language such as, “under the penalty of perjury to the best of my knowledge and belief.”	The committee agrees to eliminate the words “information and belief” of the form. As circulated for public comment, this language was included in item 3 of the form. The committee proposes restructuring the form to incorporate the rest of the language in item 3 (as circulated for public comment) into new item 1 and further clarify that the affiant is alleging that the child is currently abused or neglected or at risk of abuse and neglect as described in section 300 of the Welfare and Institutions Code. It is unnecessary to add language to the penalty of perjury statement at the bottom of the form because the words “information and belief” have been removed from item 3, and there is no longer contradictory language in the form that would require clarification in the penalty of perjury statement. For the application to constitute an affidavit under section 2015.5 of the Code of Civil Procedure, the affiant must certify that his or her declaration is true under penalty of perjury.
3.	Beverly Joan McCoy	N	Currently, anyone may report a concern of	This proposal ensures that current form JV-

7 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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	Commentator	Position	Comment	Committee Response
	Volunteer, Court Appointed Special Advocate CASA of Fresno and Madera Counties		<p>possible child abuse to the Children and Family Services hotline without revealing their identity. Too often, the suspected child abuser is either a relative, gang member, abuser of drugs/alcohol, or has serious anger management issues. Revealing the identity of a reporter exposes that person to retaliation and real harm from the suspected child abuser.</p> <p>While this proposal may reduce the number of spiteful or deliberately misleading child abuse reports, it will certainly reduce the number of people willing to step forward and report their concerns to CPS resulting in the prolonger suffering of children actually being abused.</p>	210, <i>Application to Commence Proceedings by Affidavit and Decision by Social Worker</i> , qualifies as an affidavit, as required under section 329 of the Welfare and Institutions Code. It is legally required that the applicant requesting the commencement of juvenile court proceedings based on an allegation that the child is at risk of abuse and neglect reveal his or her identify and sign the application under penalty of perjury. However, the proposed changes to form JV-210 have no impact on an individual's ability to anonymously report child abuse to a child abuse hotline.
4.	Orange County Bar Association Michael G. Yoder President	A	No narrative comments submitted.	No response required.
5.	Riverside Superior Court Staff	A	No narrative comments submitted.	No response required.
6.	San Diego County Probation Department Pamela Martinez, Drug Court Program Officer	NI	This is related to a form used by Social Services when a person applies to a social worker to commence proceedings in a juvenile court. The application must be in the form of an affidavit.	No response required.

8 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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7.	Michael B. Stone Attorney at Law El Segundo	NI	*Commentator expressed general concerns about the number of existing forms and the cumulative impact the proposed new forms will have. He stated that California has more forms than other states and the federal government. He also expressed a concern about the plain language forms and remarked that the mandatory plain language forms, designed for pro pers, do not work as well as a standard pleading for him as an attorney.	No response required.
8.	Superior Court of Los Angeles County	A	No narrative comments submitted.	No response required.
9.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No narrative comments submitted.	No response required.

Welfare and Institutions Code section 329

Whenever any person applies to the social worker to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a child within the provisions of Section 300, and setting forth facts in support thereof. The social worker shall immediately investigate as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced. If the social worker does not take action under Section 330 and does not file a petition in the juvenile court within three weeks after the application, he or she shall endorse upon the affidavit of the applicant his or her decision not to proceed further and his or her reasons therefore and shall immediately notify the applicant of the action taken or the decision rendered by him or her under this section. The social worker shall retain the affidavit and his or her endorsement thereon for a period of 30 days after notifying the applicant.

Code of Civil Procedure section 2015.5

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

“I certify (or declare) under penalty of perjury that the foregoing is true and correct”:

(Date and Place)

(Signature)

(b) If executed at any place, within or without this state:

“I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct”:
