

**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. Lee Smalley Edmon, Chair
Uniform Rules Subcommittee
Hon. Brian R. Van Camp, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933,
anne.ronan@jud.ca.gov

DATE: August 8, 2008

SUBJECT: Trial Courts: Alteration of Judicial Council Forms (amend California
Rules of Court, rules 1.31 and 1.35) (Action Required)

Issue Statement

Rules 1.31 and 1.35 of the California Rules of Court lack clarity regarding the extent to which courts and judicial officers may alter Judicial Council forms. This proposal would amend those rules to clarify that a court may not require the use of an altered mandatory or optional Judicial Council form; however, the rules would permit a judicial officer to modify a Judicial Council form order as necessary or appropriate to adjudicate a particular case.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, amend rules 1.31 and 1.35 of the California Rules of Court to clarify under what circumstances Judicial Council forms may be altered.

The text of the amended rules is attached at page 4.

Rationale for Recommendation

There has been some confusion regarding the intended meaning of rule 1.31(e) (prohibiting alteration of mandatory forms) and, by extension, its nearly identical corollary in rule 1.35(e) (prohibiting alteration of optional forms). The rules prohibit a court from altering forms *and* requiring the altered forms' use on an ongoing basis in place of Judicial Council forms. Because the word "and" can at times take on the disjunctive meaning "or," it is not entirely clear whether rules 1.31(e) and 1.35(e) should be read to proscribe courts from *both* modifying forms

and also requiring litigants to use them or proscribe courts from *either* modifying forms *or* requiring litigants to use them.

A proposal to clarify the rules was circulated for public comment in the spring 2007 comment cycle. Based on the comments, the committee last year did not pursue Judicial Council approval of the changes originally proposed, and is now proposing revised amendments.

First, regarding the ambiguity about whether courts may alter a form's language, the version previously proposed and circulated has been modified to further clarify what is being prohibited by the rule. The current proposal eliminates the conjunctive language altogether. It provides that a court can not require the use of an altered version of a Judicial Council form.

In addition, the proposal adds an exception to the rules, clarifying that judicial officers may alter Judicial Council form orders as necessary or appropriate to adjudicate a particular case. Neither courts nor parties are authorized to modify orders or any other forms, such as complaints, petitions, and declarations. Only judicial officers are authorized to modify *orders* and only for the reasons specified.

Alternative Actions Considered

The committee reconsidered the original proposal that was circulated for comments in 2007, and the changes proposed by the commentators.

Comments From Interested Parties

The newly amended rules were circulated for public comments during the spring 2008 comment cycle. Comments were received from 14 individuals or organizations, including several courts.¹ Eight agreed with the proposal as circulated, including commentators on behalf of the Superior Courts of Los Angeles, Sacramento, San Bernardino, San Diego, and Sacramento Counties and the State Bar Committee on Administration of Justice.

Three additional commentators agreed with the proposal but asked that the rule be further revised (comments 4, 7, and 12). These suggestions for expansion of the rule are beyond the scope of the circulated rules and may be considered by the committee in the future as time and resources permit.

Two courts agreed with the proposal but sought clarification. The Superior Court of Alameda County asked how the rules would work with Judicial Council forms that contemplated attachments, citing as an example *Order Appointing Child Custody Evaluator* (form FL-327), and asked that the rules be modified to expressly permit such attachments to be in the form of local court forms (comment 5). The committee has determined that such modification is unnecessary. The rule is intended to preclude a court from mandating the use of altered forms. Use

¹ A chart summarizing the comments and the committee's responses is attached at pages 5-8

of an attachment, be it in the format of a locally required form or an individually created document, with a form order that expressly provides for an attachment would not be an alteration of the form.

The Superior Court of Tulare County questioned whether the rule would permit the alteration of form protective orders, i.e., temporary restraining order forms and orders after hearing, that are issued on forms entered into the California Law Enforcement Telecommunications System (CLETS) (comment 11). The committee notes the importance of courts' recognizing that, in order for such protective orders to be transmitted to the Department of Justice through CLETS, the protective orders are required by law to be on forms adopted by the Judicial Council and approved by the Department of Justice. (Fam. Code, § 6380.) The provisions required by law to be included in such orders should not be altered and, by adopting these amendments, the committee does not intend to approve any such alterations.

Finally, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee(TCPJAC/CEAC) Joint Working Group on Rules commented that the amended rules should apply only to altered mandatory Judicial Council forms (comment 14). The proposed revision is intended to clarify that, no matter whether a Judicial Council form is mandatory or optional, a court may not require litigants to use an altered version of that form as a matter of course.

Implementation Requirements and Costs

The implementation of these rules may require some education and training for judicial officers and court staff.

Attachments

Rules 1.31 and 1.35 of the California Rules of Court is amended, effective January 1, 2009, to read as follows:

1 **Rule 1.31. Mandatory forms**

2
3 **(a)–(d) *****

4
5 **(e) No alteration of forms**

6
7 Except as provided in rule 5.504, concerning court orders in juvenile court
8 proceedings, and rule 7.101.5, concerning court orders in proceedings under
9 the Probate Code, courts may not ~~alter a mandatory Judicial Council form~~
10 ~~and~~ require the use of an altered mandatory Judicial Council form's use in
11 place of the Judicial Council form. However, a judicial officer may modify a
12 Judicial Council form order as necessary or appropriate to adjudicate a
13 particular case.

14
15 **(f)–(g) *****

16
17 **Rule 1.35. Optional forms**

18
19 **(a)–(d) *****

20
21 **(e) No alteration of forms**

22
23 Courts may not ~~alter an optional Judicial Council form and~~ require the use of
24 an altered optional Judicial Council form's use in place of the Judicial
25 Council form. However, a judicial officer may modify a Judicial Council
26 form order as necessary or appropriate to adjudicate a particular case.

27
28 **(f) *****

SPR08-26**Alteration of Judicial Council Forms** (amend Cal. Rules of Court, rules 1.31 and 1.35)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Proposed Committee Response
1	Tony Klein Process Server Institute San Francisco	A	Current rules restrict courts from requiring the use of altered mandatory or optional Judicial Council forms. Would allow alteration for use in special instances.	Commentator's agreement is noted.
2	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
3	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	A	CAJ supports this proposal.	Commentator's agreement is noted.
4	Superior Court of Alameda County By Malkai Begum Court Supervisor	AM	I think the Jurisdiction check boxes on the Civil Case Cover sheet should be revised as follows: Limited jurisdiction (Amount demanded is \$25,000.00 or less) should have two boxes to choose from: [] does not exceed \$10,000 [] exceeds \$10,000 but does not exceed \$25,000	This proposal is outside the scope of the circulated revision to rules 1.31 and 1.35. The committee will consider the proposal in the future as time and resources permit.
5	Superior Court of Alameda County By Hon. Yolanda N. Northridge Presiding Judge	AM	Add clarification regarding the application of the new rule to forms, such as Judicial Council form FL-327, that contemplate attachments. In such cases, the proposed amendment to the rules	The committee notes that the form cited by the commentator expressly contemplates attachments, so the use of local court forms as attachments would not be an "alteration" of the form precluded

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

SPR08-26**Alteration of Judicial Council Forms** (amend Cal. Rules of Court, rules 1.31 and 1.35)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

			should specify whether local courts may adopt optional local forms to be used as attachments to Judicial Council forms.	by rule.
6	Superior Court of Los Angeles County	A	No specific comments.	The court's agreement with the proposal is noted.
7	Superior Court of Orange County By Linda Daeley Manager Family Law Unit	AM	Suggest that the rule go further and state that the court may accept altered forms for filing. For example, on a Request To Enter Default form it is often necessary for the filing party to insert the word "amended" before statements regarding the Petition in order to make the statements accurate.	This proposal is outside the scope of the circulated revisions, which are intended to clarify that a court is precluded from requiring litigants to use altered Judicial Council forms. The committee will consider the proposal to amend the Request to Enter Default in the future as time and resources permit.
8	Superior Court of Sacramento County By Ed Pollard Chief Deputy Court Executive Officer	A	We agree with this proposal as written.	The court's agreement with the proposal is noted
9	Superior Court of San Bernardino County By Debra Meyers Director, Staff Counsel Services and Self-Help Division	A	No specific comments.	The court's agreement with the proposal is noted
10	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comments.	The court's agreement with the proposal is noted
11	Superior Court of Tulare County By Deanna Jasso Court Operations Analyst	A	Will this rule permit the alteration of the DOJ approved CLETS forms? Specifically DV110, DV130, CH120, CH140, EA120, and EA130.	It is important for the courts recognize that, in order for such protective orders to be transmitted to the Department of Justice (DOJ) through the California Law Enforcement Telecommunications

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

SPR08-26

Alteration of Judicial Council Forms (amend Cal. Rules of Court, rules 1.31 and 1.35)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

				System (CLETS), the orders must, by law, be on the forms adopted by the Judicial Council and approved by the Department of Justice. (Fam. Code, § 6380.) The provisions required by law in such orders should not be altered; by adopting this rule the committee does not intend to approve any such alterations.
12	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow Senior Attorney/Coordinator	AM	This is a big improvement, but some further clarification to the rule would be helpful, even if it is just in a commentary to the rule, namely that the prohibition on alteration of a form does not apply to adapting a form for a particular use when the alteration is clearly apparent on the face of the form, such as inserting additional language or by striking through certain language. This is particularly important for SRLs [self-represented litigants] because they often have to adapt a Judicial Council form for some other use because there is no form for the SRL to use. An example of this might be using an Answer-Contract form to respond to a complaint for Declaratory Relief, or using a Proof of Service By Mail-Civil form for serving a Motion for Return of Property in a criminal case. In the first example, the word “Contract” might be crossed out and the words “Declaratory Relief” inserted. In the second example the word “Civil” might be crossed out. So long as the alterations are apparent on the face of the pleading it does not mislead the court	This proposal is outside the scope of the circulated revisions, which are intended to clarify that a court is precluded from requiring litigants to use altered Judicial Council forms. The committee will consider the commentator’s suggestion in the future as time and resources permit.

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

SPR08-26**Alteration of Judicial Council Forms** (amend Cal. Rules of Court, rules 1.31 and 1.35)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

			and this flexibility greatly assists SRLs to effectively access the court.	
13	Derek Tabone Attorney Van Nuys	A	No specific comments.	Commentator's agreement is noted.
14	TCPJAC/CEAC Joint Rules Working Group By Patrick Danna Court Services Analyst and Lead AOC Staff San Francisco	AM	The Trial Court Presiding Judges Advisory Committee(TCPJAC)/Court Executives Advisory Committee(CEAC) Joint Rules Working Group comment is that the amended rules should only apply to an altered, mandatory Judicial Council form.	The proposed revision is intended to clarify that, whether a form has been adopted by the Judicial Council for mandatory use or approved for optional use, a court may not require litigants to use an altered version of that form as a matter of course.

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