

**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: Probate and Mental Health Advisory Committee  
Hon. Don Edward Green, Chair  
Douglas C. Miller, Committee Counsel, 415-865-7535,  
douglas.miller@jud.ca.gov

DATE: September 15, 2005

SUBJECT: Court Orders Not Prepared on Mandatory Judicial Council Forms  
(amend Cal. Rules of Court, rule 201.1) (Action Required)

Issue Statement

The validity or legal effect of a court order that is not prepared on a mandatory Judicial Council form is unclear. Failure to use the form may have the unintended consequence of invalidating the order or diminishing its enforceability.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, amend rule 201.1(b) of the California Rules of Court, concerning mandatory Judicial Council forms, to provide that a court order is not invalid or unenforceable because it was not prepared on a mandatory form or on the correct form.

A copy of the proposed amended rule 201.1 is attached at page 6.

Rationale for Recommendation

The Judicial Council's Rules and Projects Committee (RUPRO) requested development of a proposal for a new or amended rule of court providing that a court order for which there is a mandatory Judicial Council form is not invalid or unenforceable because it is not prepared on the form or to provide RUPRO with a recommendation against such a proposal.

A recent decision of the Court of Appeal, First Appellate District, considered an argument in favor of the timeliness of an appeal. The appellant contended that a court order that could have been but was not prepared on a mandatory Judicial Council form was an invalid order under rule 201.1(b)(1) and thus could not start the time running within which to commence the appeal.<sup>1</sup> The Court of Appeal dismissed the appeal as untimely. Its decision was on a narrow ground based on language in the specific statute involved in the case, not on rule 201.1 or its underlying statutory basis, Government Code section 68511. The decision does, however, raise a question about the validity or enforceability of any court order for which there is a mandatory form that is not prepared on that form.

Government Code section 68511 authorizes the Judicial Council to prescribe by rule the form and content of forms used in the courts of this state. Rule 201.1(b)(1) defines the forms authorized by section 68511 as those adopted by the council as mandatory forms—those that must be used by all parties and accepted for filing by all courts.

The relevant provision of section 68511 reads as follows:

When any such [mandatory] form has been so prescribed by the Judicial Council, *no court may use a different form which has as its aim the same function as that for which the Judicial Council's prescribed form is designed.* (Italics added.)

Section 68511 is silent on the validity or enforceability of court orders not prepared on applicable mandatory Judicial Council forms or on the correct forms.<sup>2</sup> The apparent purposes of the section are to (1) authorize the Judicial Council to adopt mandatory forms and (2) prohibit courts from using their own forms rather than Judicial Council mandatory forms. The proposed amended rule does not conflict with these purposes.<sup>3</sup> Invalidation of an otherwise proper order because it was not prepared on the correct form would be an undesirable consequence that is not required by the express language or purpose of section 68511.

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<sup>1</sup> *In re Ryan R.* (September 20, 2004) 122 Cal.App.4th 595

<sup>2</sup> A copy of the entire section is attached at page 7.

<sup>3</sup> The advisory committee believes that in nearly all instances, orders prepared on other than correct mandatory Judicial Council forms are due to inadvertence or perhaps emergency situations, rather than the intentional rejection of a mandatory form. Therefore, amending rule 201.1 to provide that such orders are valid and enforceable would not frustrate the goal of statewide uniformity of court forms.

*Rule 201.1(b)*

Rule 201.1(b) defines mandatory Judicial Council forms. The material provisions of this part of the rule with respect to the courts are contained in the last sentence of paragraph (1) and in paragraph (5):

- (1) Wherever applicable, they [mandatory forms] must be used by all parties *and must be accepted for filing by all the courts.*
- ...
- (5) *The court may not alter a mandatory Judicial Council form and require the altered form's use in place of the Judicial Council form.* (Italics added.)

Rule 201.1, like Government Code section 68511, does not prescribe the effect on an order that it is not on a form or on the correct form. This proposal would remedy this omission by adding a new paragraph (7) to rule 201.1(b), as follows:

- (7) An otherwise legally sufficient court order for which there is a mandatory Judicial Council form is not invalid or unenforceable because the order is not prepared on a Judicial Council form or the correct Judicial Council form.

*CLETS orders*

The advisory committee considered whether any special provision would be required or advisable to avoid or minimize unintended consequences of failure to use a mandatory form for an order that would otherwise be eligible for entry into the California Law Enforcement Telecommunications System (CLETS).<sup>4</sup>

Family Code section 6221(c) requires that CLETS orders be issued on Judicial Council forms. Section 6380(i) requires CLETS orders to be issued on Judicial Council forms approved by the Department of Justice and prohibits transmission of orders not so issued to the Department of Justice for entry into the database. CLETS orders are enforceable, however, even though they have not been entered into the database; Family Code section 6381(b) provides that a CLETS order may be enforced by a law enforcement officer if the officer has been shown, or the officer's agency has

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<sup>4</sup> A CLETS order is a protective order issued in domestic violence prevention, civil harassment, and similar types of proceedings, data from which are to be entered electronically through the State Department of Justice's CLETS system for collection in the department's domestic violence restraining order database for use by law enforcement or court personnel. Law enforcement personnel throughout the state may enforce a CLETS protective order when they receive the data concerning the order from the database without having received or seen a copy of the order. See Family Code sections 6380 and 6381. The orders involved are described in Family Code sections 6221 and 6380(b).

received, a copy of the order. The last sentence of Family Code section 6221(c) further provides:

However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

The proposed amended rule does not refer to CLETS orders. Family Code sections 6221(c) and 6381(b) indicate that such a reference is unnecessary; the Family Code provisions concerning CLETS orders are clear that such orders that are not on Judicial Council mandatory forms are enforceable.

#### Alternative Actions Considered

The advisory committee initially considered possible changes to the probate rules in title 7 of the California Rules of Court. Rule 7.101 provides that if there is a Judicial Council form order, the form must be used. However, rule 7.3 authorizes a court, for good cause, to waive application of the rules in title 7 in an individual case. The court in a probate proceeding could waive rule 7.101 by signing an order not on the mandatory form; no change in the probate rules would be necessary. The proposed amendment to rule 201.1 would clarify that all probate orders as well as orders in all other proceedings subject to the rule are valid even though not on mandatory forms.

The proposed amendment of rule 201.1 was presented to the Civil and Small Claims and Family and Juvenile Law Advisory Committees. Both committees decided to recommend adoption of the amended rule. However, some members of the Civil and Small Claims Advisory Committee suggested that the proposed rule be amended further to require either the party seeking the order or the court to prepare and file an order nunc pro tunc using the proper form as soon as practicable after the entry of a nonconforming order.

The Probate and Mental Health Advisory Committee decided not to adopt this recommendation because of the cost in time and effort that would be imposed by the requirement; the difficulty of enforcing the requirement on the many unrepresented persons who seek domestic violence, elder abuse, or other similar restraining orders; and the possibility that the requirement might lead to an increase rather than a decrease in the kinds of attacks on orders that led to RUPRO's initial concern. The Civil and Small Claims Advisory Committee supports the proposed amended rule without the suggested modification.

### Comments From Interested Persons

This proposal was circulated to a standard list of court executives, judicial officers, and organizations, and to the Civil and Small Claims and Family and Juvenile Law Advisory Committees during the regular spring rules cycle. Attached at pages 8–10 is a chart showing the comments received from the public on this proposal and the advisory committee’s responses.

Nine comments were received. All were favorable, without recommendations for modifications or additions.

### Implementation Requirements and Costs

No cost should be incurred to implement this proposal beyond the normal expenses to be expected in amending any rule of court. These expenses should be outweighed by a reduction in the cost imposed on parties and courts to defend court orders subjected to the kind of attack described in *In re Ryan R.*, supra.

### Attachments

Rule 201.1 of the California Rules of Court is amended, effective January 1, 2006, to read:

1 **Rule 201.1. Judicial Council forms**

2  
3 **(a)** Judicial Council forms are either mandatory or optional.

4  
5 **(b) [Mandatory forms]**

6  
7 (1) Forms adopted by the Judicial Council for mandatory use are forms  
8 prescribed under Government Code section 68511. Wherever  
9 applicable, they must be used by all parties and must be accepted for  
10 filing by all the courts.

11  
12 (2) Each mandatory Judicial Council form is identified as mandatory by an  
13 asterisk (\*) on the list of Judicial Council forms in division III of the  
14 Appendix to the California Rules of Court. The list is available on the  
15 California Courts Web site at *www.courtinfo.ca.gov/forms*.

16  
17 (3) Forms adopted by the Judicial Council for mandatory use bear the  
18 words “Form Adopted for Mandatory Use” or “Mandatory Form” in the  
19 lower left corner of the first page.

20  
21 (4) Publishers and courts reprinting a mandatory Judicial Council form in  
22 effect before July 1, 1999, must add the words “Mandatory Form” to the  
23 bottom of the first page.

24  
25 (5) The court may not alter a mandatory Judicial Council form and require  
26 the altered form’s use in place of the Judicial Council form.

27  
28 (6) The court may not require that any mandatory Judicial Council form be  
29 submitted on any color paper other than white.

30  
31 (7) An otherwise legally sufficient court order for which there is a  
32 mandatory Judicial Council form is not invalid or unenforceable  
33 because the order is not prepared on a Judicial Council form or the  
34 correct Judicial Council form.

35  
36 **(c)-(l) \* \* \***

## **Government Code section 68511**

68511. The Judicial Council may prescribe by rule the form and content of forms used in the courts of this state. When any such form has been so prescribed by the Judicial Council, no court may use a different form which has as its aim the same function as that for which the Judicial Council's prescribed form is designed. The Judicial Council shall report periodically to the Legislature any statutory changes needed to achieve uniformity in the forms used in the courts of this state.

**SPR05-38**

**Validity and Enforceability of Court Orders Not Prepared on Mandatory Judicial Council Forms  
(amend Cal. Rules of Court, rule 201.1)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
1.	Mr. Michael Belote California Advocates, Inc. Sacramento, California	A	Y	Agree with proposed changes.	No response necessary.
2.	Ms. Mary Carnahan Criminal Division Program Manager Superior Court of California, County of Solano Fairfield, California	A	N	Agree with proposed changes.	No response necessary.
3.	Ms. Linda A. Gorham Court Manager Superior Court of California, County of San Francisco San Francisco, California	A	N	Agree with proposed changes.	No response necessary.
4.	Ms. Keri Griffith Court Program Manager Superior Court of California, County of Ventura Ventura, California	A	N	Agree with proposed changes.	No response necessary.
5.	Mr. Samuel Ingham Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Beverly Hills, California	A	N	Agree with proposed changes.	No response necessary.

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6.	Mr. Stephen V. Love Court Executive Officer Superior Court of California, County of San Diego San Diego, California	A	N	Agree with proposed changes.	No response necessary.
7.	State Bar of California—Committee on Administration of Justice San Francisco, California	A	Y	The Committee on Administration of Justice supports this proposal. Some members of the committee were concerned that the exception would swallow the rule, and may be inconsistent with at least the spirit of the Government Code and existing rules concerning the use of mandatory forms.	The advisory committee understands the concerns expressed by some members of the State Bar committee. However, the committee believes that this proposed rule change is not inconsistent with section 68511 because that statute does not mandate the invalidity or unenforceability of court orders not prepared on applicable mandatory Judicial Council forms or on the correct forms.  The advisory committee believes that inadvertence or perhaps the need to act quickly in an emergency situation will account for virtually all orders that would be affected by this rule proposal, not the intent to frustrate the goal of statewide uniformity in the forms used in the courts of this state. Invalidation of an otherwise proper order because it

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					was not prepared on the correct form is a drastic remedy that is not required by the express language of section 68511.
8. \	Superior Court of California, + County of Los Angeles 6 Los Angeles, California (commentator not identified).	A	Y	Agree with proposed changes.	No response necessary.
9.	Mr. Dean Zipser President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.