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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 29, 2010

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Title	Agenda Item Type
Protective Orders: Confidentiality of the CLETS (California Law Enforcement Telecommunications System) Information Form	Action Required
	Effective Date
	January 1, 2011
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rules of Court, rule 1.51; revise Form DV-260/CH-102/EA-102	September 17, 2010
Recommended by	Contacts
Civil and Small Claims Advisory Committee	Patrick O'Donnell, 415-865-7665
Hon. Dennis M. Perluss, Chair	<a href="mailto:patrick.o'donnell@jud.ca.gov">patrick.o'donnell@jud.ca.gov</a>
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack and	
Hon. Susan D. Huguenor, Cochairs	

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### Executive Summary

The Civil and Small Claims and the Family and Juvenile Law Advisory Committees recommend the adoption of a rule of court that would expressly state that the information provided on the *Confidential CLETS Information* form (form DV-260/CH-102/EA-102) used to provide information to law enforcement concerning protective orders is confidential. The rule would specify those who have access to the information on the form and would prescribe for how long courts must retain the form before it is destroyed. The committees also recommend that the form be revised to be applicable to juvenile law protective order proceedings, as provided under the rule.

## Recommendation

The Civil and Small Claims and the Family and Juvenile Law Advisory Committees recommend that the Judicial Council, effective January 1, 2011:<sup>1</sup>

1. Adopt rule 1.51 on the use, confidentiality, and retention of the *Confidential CLETS Information* form; and
2. Revise the current *Confidential CLETS Information* (form DV-260/CH-102/EA-102) to add a designation as JV-248 to indicate that the form may be used in juvenile law protective order proceedings.

The text of rule 1.51 is attached at pages 8–9. The revised *Confidential CLETS Information* (form DV-260/CH-102/EA-102/JV-248) is attached at page 10.

## Previous Judicial Council Action

The purpose of the *Confidential CLETS Information* form is to enable persons seeking protective orders to provide important information about themselves and others to be transmitted through the California Law Enforcement Telecommunications System (CLETS) into the California Restraining and Protective Order System (CARPOS), a statewide database used by law enforcement agencies for the purpose of enforcing court protective orders. The Judicial Council initially adopted a *Confidential CLETS Information* form for use in domestic violence proceedings. Subsequently, similar forms were adopted for use in proceedings to prevent elder and dependent adult abuse and civil harassment. These three forms were consolidated, effective July 1, 2007, into a single form.<sup>2</sup>

All of the *Confidential CLETS Information* forms have been designated “confidential” because they contain highly sensitive personal information about persons seeking a protective order and other individuals. Although the Judicial Council has adopted the confidential forms, it has not previously adopted a rule explicitly stating that the information on the forms is confidential, specifying who has access to the forms after they are submitted to the court, or indicating for how long courts must retain the forms.

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<sup>1</sup> The committees were assisted in developing this proposal by the Protective Orders Working Group, which is comprised of members from several Judicial Council advisory committees. The cochairs of the working group are Judges Jerilyn L. Borack and Patricia M. Lucas.

<sup>2</sup> There is currently a single *Confidential CLETS Information* form designated as form DV-260/CH-102/EA-102 for use in domestic violence, civil harassment, and elder abuse protective order proceedings. This proposal, consistent with the new rule proposed in this report, would revise that *Confidential CLETS Information* form to also be used in juvenile law protective order proceedings. In a separate proposal, two additional *Confidential CLETS Information* forms are being recommended for use in workplace violence and school violence protective order proceedings. These would be new forms designated as WV-102 and SV-102. Proposed rule 1.51 would apply to all *Confidential CLETS Information* forms, regardless of whether they are used for only a single type of protective order proceeding or for several types.

## Rationale for Recommendation

### Rule 1.51

When an individual files a request for protective orders, he or she submits to the court information about himself or herself and the person against whom the protective orders are sought. This information is provided to law enforcement agencies for the purpose of enforcing the orders. (See, e.g., Fam. Code, § 6380(b).) It is entered into the California Law Enforcement Telecommunications System for inclusion in the California Restraining and Protective Order System, a database for the use of law enforcement personnel.

The information is submitted on a form titled *Confidential CLETS Information* (form DV-260/CH-102/EA-102). The form asks for personal information—including physical descriptions, addresses, vehicle license numbers, and dates of birth—about both the person seeking protective orders and the person to be restrained. Because of the sensitive nature of the information, this form has been designated as “confidential.” It currently contains a notice stating: “**This form MUST NOT become part of the public court file. It is confidential and private.** If the court issues a restraining order, this form will provide law enforcement with information that will assist them in enforcing a restraining order” (bold in the original).

This proposal would add rule 1.51 to the California Rules of Court to provide direction to the public and the courts on how the *Confidential CLETS Information* form is to be used, who has access to the information on it, and how long courts must retain the form.

Subdivision (a) of the rule would provide that any person requesting protective orders under Code of Civil Procedure section 527.6, 527.8, or 527.85; Family Code section 6320; or Welfare and Institutions Code section 213.5 or 15657.03 must submit to the court with the request a completed *Confidential CLETS Information* form. Thus, the form applies to protective order proceedings in civil harassment, workplace violence, private postsecondary school violence, domestic violence, juvenile law, and elder and dependent adult abuse prevention cases.

Subdivision (b) would state that the *Confidential CLETS Information* form is confidential and access to the information on the form is limited to the persons listed in (c).

Subdivision (c) would state that the form must not be included in the public court file and would list the persons who have access to information on the form after it is submitted to the court. Based on the comments, the committees recommend that the list be limited to authorized court personnel and law enforcement personnel.<sup>3</sup>

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<sup>3</sup> The version of subdivision (c) that was circulated had a longer list of persons with access:

- (1) Judicial officers and authorized court personnel;
- (2) Law enforcement and other personnel authorized by the California Department of Justice to transmit or receive CLETS information;
- (3) The person requesting protective orders, that person’s attorney of record, and the attorney’s designated employees or agents; and
- (4) Other persons permitted access to the information by court order.

Subdivision (d) would provide that a person requesting protective orders or the person's attorney may submit an amended *Confidential CLETS Information* form as a matter of right to provide updated or more complete and accurate information.

Subdivision (e) concerns how long the form must be retained before being destroyed. After reviewing the comments, the committees recommend that subdivision (e) be revised to provide that, when a *Confidential CLETS Information* form is submitted to the court, the court, if a temporary restraining order or order after hearing is entered, may transmit the form to law enforcement for entry into CLETS and not retain any copy, or it may enter the information on the form into CLETS itself and promptly destroy the form or delete it from its records. If no temporary restraining order or order after hearing is entered, the court may promptly destroy the form or delete it from its records. Until the court has completed one of these procedures, the *Confidential CLETS Information* form must be retained in a secure manner that prevents access to the information on the form except to those persons identified in subdivision (c).

The shorter list of those with access in subdivision (c) and the proposed new provisions on retention and destruction in subdivision (e) are consistent with the purpose of the form, which is to provide confidential information for entry into CLETS. The information on the form is meant to be used in enforcing protective orders. Courts do not need to retain this information in court records. Indeed, to be required to maintain the forms would be burdensome and might create security issues.

### ***Confidential CLETS Information form***

Rule 1.51 provides that the *Confidential CLETS Information* form would be used in all types of protective order proceedings in which information must be entered into CLETS; this includes juvenile law protective orders under Welfare and Institutions Code section 213.5. (See rule 1.51(a).) A *Confidential CLETS Information* form is needed for use in juvenile law protective order proceedings because, as in other protective order proceedings, information about restraining orders issued in juvenile proceedings must be entered into CLETS. (See Fam. Code, § 6380(b).)<sup>4</sup> However, the current *Confidential CLETS Information* form (form DV-260/CH-102/EA-102) is designated for use only in proceedings involving domestic violence, civil harassment, and elder or dependent adult abuse.

To implement the new rule and the existing statute requiring entry of information about juvenile protective orders into CLETS, the advisory committees recommend that the *Confidential CLETS Information* form (form DV-260/CH-102/EA-102) be revised to add a designator JV-248, so that the form can also be used in juvenile protective order proceedings. The committees recommend that the form be revised effective January 1, 2011, even though the form was not circulated for

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<sup>4</sup> The specific inclusion in section 6380(b) of the requirement that information about juvenile protective orders be entered into CLETS distinguishes this information from the juvenile case file and other court records that are to be kept confidential under Welfare and Institutions Code sections 827 and 827.9.

comment this spring along with the rule. The committees support this option because the revision of the form is straightforward, directly implements the new rule and applicable statute, and is unlikely to create controversy. (See Cal. Rules of Court, rule 10.22(d).)

The revised version of the form reflects the formatting and other changes that were included in the two new *CLETS Information* forms SV-102 and WV-102, which were circulated for comment in spring 2010. It is anticipated that revised form DV-260/CH-102/EA-102/JV-248 will be circulated again next year as part of the broader protective orders revision process that is underway. So the public will have an opportunity to comment on the form at that time.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments and alternatives considered**

The proposal to adopt rule 1.51 was circulated for public comment in the spring 2010 comment cycle. Five comments were received on the rules proposal.<sup>5</sup> The commentators included the California Judges Association, two superior courts, a local bar association, and an individual. Three commentators agreed with the proposal, one agreed if the proposal is modified, and one did not agree with the proposal.

The California Judges Association supported the proposed rule. It commented: “It provides useful direction to the public and the courts on how the *CLETS Information Form* is to be used and who has access to information on it. The timeframe for deletion and destruction of the form is also helpful.” (Comment 1.)

A superior court supported the adoption of rule 1.51 “because it will make sure *CLETS* information is kept confidential and uniform rules apply to protect this information.” The court indicated that it thought the rule properly limits access. And it stated that “the rule does not need to state explicitly that persons or organizations that help individuals prepare *CLETS* are exempt. The language in (c) about access ‘[a]fter the form is submitted to the court’ makes it very clear that this does not impact those individuals and organizations. It is also important to note that while the form is being prepared, the court has no way to limit access to these parties, nor would it want to.” (Comment 5.)

Another superior court expressed concerns about subdivision (e) of the rule relating to the retention and destruction of the *Confidential CLETS Information* form. It asked: “If this information is being provided for the sole benefit of law enforcement, why is the court responsible for destroying the documentation? . . . It would be simpler for the court to forward the document to law enforcement (without making a copy) and avoid opening the court to any liability stemming from the form being misplaced or filed in the legal file.” (Comment 4.)

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<sup>5</sup> A chart summarizing the comments and the committees’ responses is attached at pages 11-13.

The advisory committees agreed that the purpose of the form is to provide information to law enforcement personnel and that the form does not need to be retained as long as originally proposed. The committees interpreted the comment as a suggestion that subdivision (e) be modified to provide that the *Confidential CLETS Information* form should not be kept by the court but should be given to law enforcement. This approach to disposing of the form would work where the court physically gives the *Confidential CLETS Information* form to a law enforcement agency to enter into CLETS. However, in other situations, the court may electronically transmit a copy of the form to a law enforcement agency and still have a copy. And, in another situation, the court itself may directly enter the information into CLETS. In those cases, the court would need to destroy the *Confidential CLETS Information* form or delete it from its document management system. To accommodate all these situations, the committees have revised subdivision (e) to provide that the form need not be kept any longer than is necessary for the information to be entered into CLETS by a law enforcement agency or the court. Subdivision (e) has also been revised to cover the situation where, after a *Confidential CLETS Information* form has been submitted, no temporary restraining order or order after hearing is entered: in that event, the court may destroy or delete the form.

Finally, on the rule proposal, an individual suggested modifying the access provisions in rule 1.51(c)(3) to add attorneys-in-fact of persons requesting a protective order to the list of those who have access to the information on the form submitted to the court. In light of the committees' recommendation that the form be retained only for a short period and that access be limited to authorized court personnel and law enforcement personnel, the committees do not support this suggestion. (Comment 2.)

In addition to considering comments on the rule proposal, the advisory committees considered alternatives regarding the need for a *Confidential CLETS Information* form to implement rule 1.51 and Family Code section 6380 in juvenile protective order proceedings. They considered two options: (1) the current *Confidential CLETS Information* (form DV-260/CH-102/EA-102) could be modified for this purpose, effective at the same time as the rule on January 1, 2011, without being circulated; or (2) the form could be revised, circulated, and not become effective until next year. The committees support the first option because the revision is straightforward, it implements the rule and statute right away, and it is not likely to be controversial.

### **Policy implications**

This proposal will clarify and improve the procedures for litigants and the courts to provide law enforcement agencies with the information they need to enforce protective orders while protecting sensitive private information. Thus, it effectuates important public policies.

### **Implementation Requirements, Costs, and Operational Impacts**

Courts are already using the *Confidential CLETS Information* form in most types of protective order proceedings. Therefore, this rule proposal should not require any significant new implementation efforts by the courts. The rule will clarify who has access to the information on

the form and will provide guidance on the retention and destruction of the form. The revised *Confidential CLETS Information* form will assist persons seeking protection and allow courts to enter information into CLETS in juvenile protective order proceedings. It is expected that the revised form will be circulated for comment again in 2011, which will provide the public with an opportunity to comment within the next year on the form.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This rule and form proposal furthers the Judicial Council goal of access to the courts and court proceedings (Goal 1). It supports the policies of promoting innovative and effective practices for processing cases and ensuring that statewide rules promote the fair, timely, effective, and efficient processing of cases underlying Goal III, Modernization of Management and Administration (Goal IIIB, Policies 1 and 2). Finally, the proposal promotes delivering the highest quality of justice and service to the public (Goal IV). (See Goal IV, Objective 1 (foster excellence in public service to ensure that all court users receive satisfactory service and outcomes), Desired Outcome e (improved practices and procedures to ensure fair, expeditious, and accessible administration of justice for litigants in domestic violence cases).)

### **Attachments**

1. Cal. Rules of Court, rule 1.51, at pages 8–9
2. Form DV-260/CH-102/EA-102/JV-248, at page 10
3. Chart of comments, at pages 11–13



Rule 1.51 of the California Rules of Court is adopted, effective January 1, 2011, to read:

1  
2 **Rule 1.51. California Law Enforcement Telecommunications System (CLETS)**  
3 **information form**  
4

5 **(a) Confidential CLETS Information form to be submitted to the court**  
6

7 A person requesting protective orders under Code of Civil Procedure section 527.6, 527.8,  
8 or 527.85; Family Code section 6320; or Welfare and Institutions Code section 213.5 or  
9 15657.03 must submit to the court with the request a completed Confidential CLETS  
10 Information form.  
11

12 **(b) Confidentiality of the form**  
13

14 The Confidential CLETS Information form is confidential, and access to the information on  
15 the form is limited to the persons listed in (c).  
16

17 **(c) Access to information on the form**  
18

19 The Confidential CLETS Information form must not be included in the court file. After the  
20 form is submitted to the court, only the following persons may have access to the  
21 information on the form:  
22

23 (1) Authorized court personnel; and  
24

25 (2) Law enforcement and other personnel authorized by the California Department of  
26 Justice to transmit or receive CLETS information.  
27

28 **(d) Amendment of the form**  
29

30 A person requesting protective orders or the person's attorney may submit an amended  
31 Confidential CLETS Information form as a matter of right to provide updated or more  
32 complete and accurate information.  
33

34 **(e) Retention and destruction of the form**  
35

36 (1) When a Confidential CLETS Information form is submitted to the court, the court, if  
37 a temporary restraining order or order after hearing is entered, may:  
38

39 (A) Transmit the form to a law enforcement agency for entry into CLETS and not  
40 retain any copy; or  
41

- 1                    (B) Enter the information on the form into CLETS itself and promptly destroy the  
2                    form or delete it from its records.  
3  
4                    (2) If no temporary restraining order or order after hearing is entered, the court may  
5                    promptly destroy the form or delete it from its records.  
6  
7                    (3) Until the court has completed (1) or (2), the form must be retained in a secure  
8                    manner that prevents access to the information on the form except to those persons  
9                    identified in (c).

California Law Enforcement Telecommunications System (CLETS) Information Form

- Form submission options: initial filing or amended form.

Important Notice: This form MUST NOT become part of the court file. The information in it is confidential.

Person to Be Protected: Fill out this form as much as you can and give it to the court clerk.

Case number for your restraining order (if you know it):

1 Person to Be Protected (name): Sex, Height, Weight, Race, Hair Color, Eye Color, Age, Date of Birth, Telephone Number, Vehicle, License Number and State.

2 Person to Be Restrained (name): Sex, Height, Weight, Race, Hair Color, Eye Color, Age, Date of Birth, residence address, workplace, business address, Driver's License Number and State, Social Security Number, Vehicle, Describe any marks, scars, or tattoos, Other names used by the restrained person.

3 Guns or Firearms Describe any guns or firearms that you believe the restrained person owns or has access to (include types and locations, if known):

4 Other People to Be Protected Table with columns: Name, Date of Birth, Sex, Race, Relation to Person in 1

Continued on Attachment 4

This is not a court order—Do not file in court file.



**SPR10-42****Protective Orders: Confidentiality of Information on California Law Enforcement Telecommunications System (CLETS) Information Form** (adopt Cal. Rules of Court, rule 1.51)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committees' Response</b>
1.	California Judges Association San Francisco By Jordan O. Posamentier Legislative Counsel	A	We support the proposed rule 1.51. It provides useful direction to the public and the courts on how the CLETS Information Form is to be used and who has access to information on it. The timeframe for deletion and destruction of the form is also helpful.	The California Judges Association's support for the rule and its comment are noted.
2.	Kyle Hamilton Victim San Jose	AM	There are circumstances which might require that a parent cannot get down to the courthouse while it is open, might also not be able to afford an attorney of record, and might also have moved to an entirely different portion of the state as part of the victim and witness protection program.  I propose that 1.51(c)(3) be modified to also explicitly name attorneys-in-fact of the person requesting the protective order, so that less time must be taken by the court to order the granting of access.	The committees do not support expanding the list of those who have access to the form. On the contrary, as explained in the report, the committees recommend modifying the proposed rule to limit the list so that only authorized court personnel and law enforcement will have access to the form and the form will be destroyed after the information on it has been entered into CLETS. This is consistent with the purposes of the form.  It should be noted that the persons who prepared and submitted a form will know what is on the form; so they and their representatives should generally not need to have access to the information on the form.
3.	Orange County Bar Association Newport Beach By Lei Lei Wang Ekvall, President	A	No specific comment.	No specific response required.
4.	Superior Court of Los Angeles County	N	If this information is being provided for the sole benefit of law enforcement, why is the court responsible for destroying the documentation? The form states it is not to	The committees agree that the purpose of the form is to provide information to law enforcement and that the form does not need to be retained as long as originally proposed. The rule should be modified to reflect its purpose. The committees

**SPR10-42**

**Protective Orders: Confidentiality of Information on California Law Enforcement Telecommunications System (CLETS) Information Form** (adopt Cal. Rules of Court, rule 1.51)

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	Commentator	Position	Comment	Committees' Response
			be filed or become part of the legal file. Is it the intent of Judicial Council for the court to keep copies of the form when submitted? If not, what documentation would there be to destroy? It would be simpler for the court to forward the document to law enforcement (without making a copy) and avoid opening the court to any liability stemming from the form being misplaced or filed in the legal file.	<p>have interpreted the court's comment as a suggestion that subdivision (e) be modified to provide that the <i>CLETS Information</i> form should not be kept by the court, but should be given to law enforcement. This approach to disposing of the form would work where the court physically gives the <i>CLET Information</i> form to law enforcement to enter into CLETS. However, in other situations, the court may electronically transmit a copy of the form to law enforcement and still have a copy. And in still other situations, the court itself may directly enter the information into CLETS. In those cases, the court would need to destroy the <i>CLETS Information</i> form or delete it from its document management system.</p> <p>To accommodate all these situations, the committees have prepared and recommend a revised version of subdivision (e) that provides that the form will not be kept any longer than is necessary for the information to be entered into CLETS by law enforcement or the court. Revised subdivision (e) also covers the situation where, after a <i>CLETS Information</i> form has been submitted, no temporary restraining order or order after hearing is entered: in that event, the court may destroy or delete the form.</p>

**SPR10-42****Protective Orders: Confidentiality of Information on California Law Enforcement Telecommunications System (CLETS) Information Form** (adopt Cal. Rules of Court, rule 1.51)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committees' Response</b>
5.	Superior Court of San Diego County Michael M. Roddy, Court Executive Officer	A	<p>Our court concurs with the creation of California Rules of court, rule 1.51 because it will make sure CLETS information is kept confidential and uniform rules apply to protect this information statewide.</p> <p>In answer to the committees' questions, our court provides the following responses:</p> <ol style="list-style-type: none"> <li>1. Does it properly limit access? <i>Yes.</i></li> <li>2. Does the rule need to state explicitly that persons or organizations that help individuals preparing CLETS Information form do not run afoul of the confidentiality provisions in the rule by providing such access? <i>No, the rule does not need to state explicitly that persons or organizations that help individuals prepare CLETS are exempt. The language in (c) about access "[a]fter the form is submitted to the court" makes it very clear that this does not impact those individuals and organizations. It is also important to note that while the form is being prepared, the court has no way to limit access to these parties, nor would it want to.</i></li> </ol>	<p>The committees note the court's support for the rule.</p> <p>The committees generally agree with the court's conclusions on these two issues, though as explained in the report, they have concluded that access should be further limited to authorized court personnel and law enforcement.</p>