

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR16-11

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Title	Action Requested
Forms: Declarations of Demurring Party Regarding Meet and Confer	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CIV-140 and CIV-141	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Susan R. McMullan, 415-865-7990 <a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>

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### Executive Summary and Origin

Senate Bill 383 (Stats. 2015, ch. 418) added to and amended statutes governing demurrers to pleadings. New Code of Civil Procedure section 430.41 requires a meet-and-confer session before a party can file a demurrer. The Civil and Small Claims Advisory Committee proposes two new optional forms to implement the meet-and-confer requirements that a demurring party must comply with before filing a demurrer, and to obtain an automatic 30-day extension of time to file a demurrer when the parties were unable to meet before the due date of the responsive pleading.

### The Proposal

The Civil and Small Claims Advisory Committee recommends two optional form declarations for a demurring party to use when seeking an automatic 30-day extension of time to file a demurrer and to demonstrate compliance with the meet-and confer requirements of Code of Civil Procedure section 430.41(a).<sup>1</sup> The forms would be useful to implement statutory changes.

#### *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140)

This new form would be filed with the demurrer, consistent with the requirements of section 430.41(a)(3), which provides:

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

- (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
- (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

The form provides check boxes for the demurring party to indicate to which pleading the party is demurring and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer, whether the meeting was by telephone or in person, and that the parties did not reach an agreement resolving the objections raised in the demurrer; or (2) that the party who filed the pleading failed to respond to a request to meet and confer or otherwise failed to meet and confer in good faith.

*Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141)

This new form would be used by the demurring party to state under penalty of perjury that he or she made a good faith attempt to meet and confer with the party that filed the pleading at least five days before the date the responsive pleading was due. It includes space for the demurring party to describe, as required by section 430.41(a)(2), the reasons why the parties could not meet and confer before the initial due date for the responsive pleading. The extension is automatic, provided the party seeking the extension files a declaration on or before the date on which a demurrer would be due. (Code Civ. Proc., § 430.41(a)(2).) Any further extensions must be obtained by court order upon a showing of good cause (*ibid.*). Thus, form CIV-141 would be used only for an initial extension of time.

**Alternatives Considered**

The advisory committee considered not recommending the two proposed forms but decided that they would be useful to educate parties on the new meet-and-confer requirements and make it easier for courts to find that the requirements had been met.

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

The advisory committee believes that any implementation requirements, costs, or operational impacts would be minimal. The forms are proposed to be optional, and provide the necessary information and statements that must be included when a party seeks an extension to file a demurrer or files a demurrer. They will help ensure that the demurring party provides the necessary information. Courts will incur minor one-time costs and operational impacts in training staff and adding the new forms to case management systems.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Forms CIV-140 and CIV-141 at pages 4–5.
2. Senate Bill 383: [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0351-0400/sb\\_383\\_bill\\_20151001\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0351-0400/sb_383_bill_20151001_chaptered.pdf)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
<b>DECLARATION OF DEMURRING PARTY REGARDING MEET AND CONFER</b>	CASE NUMBER: _____

I (*name*) \_\_\_\_\_ was served with

a complaint   
  an amended complaint   
  a cross-complaint  
 an answer   
  other (*specify*): \_\_\_\_\_

in the above-titled action and I am filing a demurrer to the pleading.

**DECLARATION** (*Choose either (1) or (2) below.*)

- (1)  At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer  by telephone  in person and we did not reach an agreement resolving the matters raised by the demurrer.
- (2)  The party who filed the pleading subject to demurrer failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

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

Date:

\_\_\_\_\_

(NAME OF PARTY OR ATTORNEY FOR PARTY)

\_\_\_\_\_

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
<b>DECLARATION OF DEMURRING PARTY IN SUPPORT OF AUTOMATIC EXTENSION</b>	CASE NUMBER: _____

I (*name*) \_\_\_\_\_ was served with

a complaint   
  an amended complaint   
  a cross-complaint  
 an answer   
  other (*specify*): \_\_\_\_\_

in the above-titled action. A responsive pleading is due on (*date*): \_\_\_\_\_

**DECLARATION**

I intend to file a demurrer in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am demurring to at least five days before the date when the responsive pleading is due. We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure section 430.41, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due. I was unable to meet with that party because:  
*(The reasons why the parties could not meet and confer are set forth):*

below   
  on form MC-031, *Attached Declaration*

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

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)