

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR18-08

Title	Action Requested
Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CIV-140 and CIV-141	January 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Ann I. Jones, Chair	susan.mcmullan@jud.ca.gov

Executive Summary and Origin

Recent legislation added to and amended the Code of Civil Procedure to require a meet-and-confer session before a party can file a motion to strike a pleading or a motion for judgment on the pleadings, and to provide for an automatic extension of time if the parties are unable to meet and confer within the time allowed. The Civil and Small Claims Advisory Committee proposes revising two optional forms, one to implement the meet-and-confer requirements and the other to be used to obtain an automatic 30-day extension of time to file a motion to strike a pleading or a motion for judgment on the pleadings when the parties were unable to meet before the due date of the motion.

The Proposal

Among other changes, Assembly Bill 644 (Stats. 2017, ch. 273) added Code of Civil Procedure¹ sections 435.5 and 439, respectively, to require that before filing a motion to strike or a motion for judgment on the pleadings, the moving party must meet and confer with the party who filed the pleading that is subject to the motion to strike or motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the objections to be raised in the motion.

For a motion to strike, the meet-and-confer session must occur at least five days before the date a motion to strike must be filed. Under section 435(b)(1), a motion to strike must be filed within the time allowed to respond to a pleading. A 30-day extension of time to file the motion is

¹ 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 These proposals are circulated for comment purposes only.

automatically granted by the filing of a declaration seeking the extension no later than the date the motion to strike must be filed.

For a motion for judgment on the pleadings, the meet-and-confer session must occur “at least five days before the date a motion for judgment on the pleadings is filed.” (Code Civ. Proc., § 439(a)(2).) The last date that a motion for judgment on the pleadings may be filed is governed by section 438(e) and is based on when the action was first set for trial and when a pretrial conference order was entered. A 30-day extension of time to file the motion is automatically granted by the filing of a declaration seeking the extension no later than “the date the motion for judgment on the pleadings must be filed.”

These two optional forms were adopted effective January 1, 2017, to provide 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), which addresses the filing of demurrers. The forms would be revised to serve the same purposes—an automatic extension of time for filing and a demonstration of compliance with new meet-and-confer requirements—for parties filing a motion to strike a pleading or a motion for judgment on the pleadings, consistent with new sections 435.5 and 439. In addition, a technical correction would be made to form CIV-140, item 1, which currently reads, “At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer.” Because section 430.41(a) does not require five days between an unsuccessful meet-and-confer session and the filing of a demurrer, item 1 would be revised to replace “At least five days before filing the demurrer” with “At least five days before the date a responsive pleading was due to be filed.”

Declaration of Demurring or Moving Party Regarding Meet and Confer (form CIV-140)

The form provides check boxes for the demurring or moving party to indicate to which pleading the party is demurring or moving to strike or moving for judgment on, and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer or motion, 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 motion; 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 or Moving Party in Support of Automatic Extension (form CIV-141)

Currently this form is for a 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 would be revised to be used by a party moving to strike or moving for judgment on the pleadings 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 (for a motion to strike) and at

least five days before a motion for judgment on the pleadings must be filed.² It includes space for the moving party to describe the reasons why the parties could not meet and confer before the initial due date for the responsive pleading or before the motion for judgment on the pleadings must be filed. The extension is automatic, provided the party seeking the extension files a declaration on or before the relevant filing date. (Code Civ. Proc., §§ 435.5 (a)(2) and 439(a)(2).)

Alternatives Considered

The advisory committee considered not recommending revisions to expand the use of the two proposed forms beyond demurrers, but decided that it made sense to expand them as legislation expanded the meet-and-confer requirements to motions to strike or for judgment on the pleadings. The committee believes they will 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 files a motion to strike or motion for judgment on the pleadings, or seeks an extension to do so. They will help ensure that the moving 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.

² A motion for judgment on the pleadings must be made no later than 30 days after whichever of the following occurred later: the action was first set for trial, or a pretrial conference order was entered. (Code Civ. Proc., § 438(e).)

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?
- With current forms CIV-140 and CIV-141, have courts been receiving sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions? Should the forms be revised to require additional information, such as the amount of time spent in the meet-and-confer session, the number of causes of action discussed, or other detailed information?

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 3 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 5–6.
2. Link A: Assembly Bill 644, at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB644

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): _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff/Petitioner: _____ Defendant/Respondent: _____	
DECLARATION OF DEMURRING OR MOVING PARTY REGARDING MEET AND CONFER	CASE NUMBER: _____

To the party filing a demurrer, motion to strike, or motion for judgment on the pleadings: This form must be filed with the demurrer, motion to strike, or motion for judgment on the pleadings.

(Name of party): _____ was served with

a complaint an amended complaint a cross-complaint

an answer other (specify): _____

in the above-titled action and is filing a demurrer motion to strike motion for judgment on the pleadings

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

- (1) At least five days before the date a responsive pleading was due to be filed (if I am filing a demurrer or motion to strike) or at least five days before filing a motion for judgment on the pleadings (if I am filing a motion for judgment on the pleadings), I met and conferred with the party who filed the pleading by telephone in person and we did not reach an agreement resolving the matters raised by the demurrer, motion to strike, or motion for judgment on the pleadings.
- (2) The party who filed the pleading subject to demurrer, motion to strike, or motion for judgment on the pleadings failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

If you would like to provide additional information, please use 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)

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 (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):	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
DECLARATION OF DEMURRING OR MOVING PARTY IN SUPPORT OF AUTOMATIC EXTENSION	CASE NUMBER:

(Name of party): _____ was served with

- a complaint
 an amended complaint
 a cross-complaint
 an answer
 other (specify): _____

in the above-titled action.

For a demurrer or motion to strike, a responsive pleading is due on (date): _____

DECLARATION

I intend to file a demurrer, motion to strike, or motion for judgment on the pleadings 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 responding to at least five days before the date when the responsive pleading is due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). 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 sections 430.41, 435.5, or 439, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading or motion for judgment on the pleadings.

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 (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). I was unable to meet with that party because: (The reasons may be filed 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)