
INVITATION TO COMMENT

SPR18-34

Title

Protective Orders: Entry of Interstate and Tribal Protective Orders, Canadian Protective Orders, and Gun Violence Restraining Orders into CLETS; New Form for Registration of Canadian Domestic Violence Protective Orders; rule amendment to add Gun Violence Restraining Orders

Proposed Rules, Forms, Standards, or Statutes
Amend rules 1.51 and 2.503: adopt form DV-630

Proposed by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn Borack, Cochair

Hon. Mark Juhas, Cochair

Civil and Small Claims Advisory Committee

Hon. Ann I. Jones, Chair

Action Requested

Review and submit comments by June 8, 2018

Proposed Effective Date

January 1, 2019

Contact

Gregory Tanaka, 415-865-7671,
gregory.tanaka@jud.ca.gov

Frances Ho, 415-865-7662,
frances.ho@jud.ca.gov

Patrick O'Donnell, 415-865-7665,
patrick.o'donnell@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending rule 1.51 of the California Rules of Court to include the registration of (1) interstate and tribal court protective orders, under Family Code section 6404; and (2) Canadian protective orders, under Family Code section 6454, as protective orders that must be submitted to the court with a completed *Confidential CLETS Information* form. The committee also proposes the adoption of a new mandatory form to implement the requirements of Senate Bill 204 that allow domestic violence protection orders issued in a Canadian civil court to be registered and enforced in California under Family Code sections 6450–6460.

The Civil and Small Claims Advisory Committee proposes amending two rules relating to protective orders. It proposes amending rule 1.51 to add a reference to Penal Code sections

18100—18205, the gun violence restraining order statutes that became operative January 1, 2016, as protective orders that must be submitted to the court with a completed *Confidential CLETS Information* form. In addition, it proposes amending rule 2.503(c) to add records in gun violence prevention proceedings to the list of electronic court records that are accessible only at the courthouse and are not available remotely.

The Proposal

Amendments to rule 1.51

Rule 1.51(a) on the *California Law Enforcement Telecommunications System (CLETS) Information Form* lists the protective orders that must be submitted to the court with a completed confidential form. Under the existing rule, the list includes all the protective orders issued under Code of Civil Procedure sections 527.6, 527.8, and 527.85; Family Code section 6320; and Welfare and Institutions Code sections 213.5 and 15657.03.

The list should be updated to reflect additional statutes that provide that other types of protective orders must be entered using the California Law Enforcement Telecommunications System (CLETS). The law requires interstate and tribal court protective orders to be entered into CLETS under Family Code section 6404, Canadian protective orders under section 6454, and gun violence restraining orders under Penal Code sections 18100–18205.¹ To ensure that all required information from protective orders is properly entered into CLETS, using the *Confidential CLETS Information* form, the statutory sections prescribing the entry of out-of-state, tribal court, Canadian, and gun violence protective orders need to be added to rule 1.51(a).

Proposal to Adopt *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630)

The Family and Juvenile Law Advisory Committee proposes that the Judicial Council adopt a mandatory form, *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630), to implement the requirements of Senate Bill 204 (Family Code § 6400 et. seq.). Family Code section 6450 et seq. sets forth the following requirements for registration and enforcement of Canadian domestic violence protection orders in California:

1. *The order must be issued in a civil proceeding in English (Fam. Code, § 6451(a)).*

Family Code section 6451(a) states that for purposes of the act, a “Canadian domestic violence protection order”:

¹ More specifically, regarding the gun violence restraining orders, Penal Code section 18115(a) prescribes that the court shall notify the Department of Justice when a gun violence restraining order is issued or renewed and section 18115(c) states that the notices shall be submitted electronically in a manner prescribed by the department. The department has directed that the procedure for submitting gun violence restraining order information into the California Restraining and Protective Order System (CARPOS) is to use CLETS. (See CARPOS Manual, section 6.4.1.)

“[M]eans a judgment or part of a judgment or order issued in English in a civil proceeding by a court of Canada under law of the issuing jurisdiction that relates to domestic violence....”

The legislative history of SB 204 states that the law only includes orders issued by civil courts because of the due process concerns raised by enforcing protection orders issued by a foreign country’s criminal court system.²

2. *Certified copy of the Canadian protective/restraining order is required (Fam. Code, § 6454(a)).*

A certified copy of a Canadian protective order must be presented to the court for registration. This is different than the statutory procedure under Family Code section 6404 for registration of interstate and tribal court protective orders—which does not require a certified copy.

3. *The order must be sealed and entered into CLETS (Fam. Code, § 6454(a)).* Once registered, consistent with the procedures for other foreign domestic violence restraining orders under Family Code sections 6380 and 6404, Canadian protective orders are also required to be:

- a. Entered into the California Law Enforcement Telecommunications System (CLETS);
- b. Sealed; and
- c. Accessed only by law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

The Family and Juvenile Law Advisory Committee considered revising an existing form, *Order to Register Out-of-State or Tribal Court Protective/Restraining Order (form DV-600)*, to include Canadian protective orders. However, unlike the statutory procedures for registration of interstate and tribal court protective orders, the registration of Canadian protective orders—as described above—requires the submission of a certified copy of the order and is limited to orders issued in civil proceedings. Hence, the committee is proposing that the council adopt a specific new order that expressly satisfies the statutory requirements for the registry of Canadian protective orders.

Amendments to rule 2.503

The Civil and Small Claims Advisory Committee proposes that rule 2.503(c) be amended to add records in gun violence prevention proceedings to the list of electronic records that are not accessible remotely and are available only at the courthouse. This proposal is consistent with the history and purpose of that subdivision.

² Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 204 (2017–2018 Reg. Sess.) July 7, 2017, p. 7.

Rule 2.503 (formerly rule 2074) was adopted in recognition that certain types of cases contain sensitive private information. Although these cases are public records, “unrestricted Internet access to case files would compromise privacy and, in some cases, could increase the risk of personal harm to litigants and others whose private information appears in case files.”³ Hence, to balance the right of public access to trial records against the right of privacy, a rule was adopted that provides that access to certain sensitive types of case records will be provided only at the courthouse.

The original list of case records available only at the courthouse included records in family and juvenile proceedings; guardianship and conservatorship proceedings; mental health proceedings; criminal proceedings; and civil harassment proceedings. Subsequently, rule 2.503(c) has been amended several times. Additional types of records that are presently available only at the courthouse are records in elder and dependent adult abuse prevention proceedings; workplace violence prevention proceedings; post-secondary violence prevention proceedings; and proceedings to compromise the claims of a minor. Because gun violence prevention proceedings share many of the same characteristics as the proceedings described above and raise similar privacy and safety concerns, it is appropriate provide the same type of limited, courthouse-only access for records in these proceedings as for those already included under rule 2.503(c).

Alternatives Considered

The rule proposal principally update rules 1.51 and 2.503 to reflect recent developments in the statutes relating to protective orders. While the rules could have been left unchanged, this would create a risk that important information about certain protective orders might not be properly entered into CLETS and that gun violence restraining orders might be made remotely accessible, unlike any other type of protective order. Furthermore, as mentioned above, regarding the development of the form order for registering Canadian protective orders, the Family and Juvenile Law Advisory Committee considered revising the order for registering out-of-state and tribal protective orders to cover this additional type of order; but it concluded that, based on the unique requirements for registering a Canadian protective order, it would be better to have a separate order for this purpose.

Implementation Requirements, Costs, and Operational Impacts

The proposed amendments to rule 1.51 relating to entry of orders into CLETS will largely reflect and clarify current practices; hence, they should not require any significant implementation requirements, result in costs for the courts, or have operational impacts. To the extent that any courts currently make gun violence restraining orders available remotely, amending rule 2.503(c) to add such orders to the list of records not available remotely may require some programming; but the amount of such orders available remotely is likely very small. Finally, the adoption of the new *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-

³ Jud. Council report titled *Public Access to Electronic Court Records* (dated October 5, 2001), page 7. The report explains the legal and policy reasons for providing courthouse-only access in certain case types.

630) should make it easier for parties to register Canadian protective orders, and for courts to process these orders.

Request for Specific Comments

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

- Do the proposals appropriately address the stated purposes?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposals 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 three months from Judicial Council approval of these proposals until their effective date provide sufficient time for implementation?
- How well would these proposals work in courts of different sizes?

Attachments

1. Rules 1.51 and 2.503, pages 6–7
2. *Order to Register Canadian Domestic Violence Protective/Restraining Order* (form DV-630), pages 8–9

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

3
4 **(a) Confidential CLETS Information form to be submitted to the court**

5
6 A person requesting protective orders under Code of Civil Procedure section 527.6,
7 527.8, or 527.85; Family Code section 6320, 6404, or 6454; Penal Code sections
8 18100–18205; or Welfare and Institutions Code section 213.5 or 15657.03 must
9 submit to the court with the request a completed *Confidential CLETS Information*
10 form.

11
12 **(b)–(e) * * ***

13
14
15 **Rule 2.503. Public access**

16
17 **(a) * * ***

18
19 **(b) Electronic access required to the extent feasible**

20
21 A court that maintains the following records in electronic form must provide
22 electronic access to them, both remotely and at the courthouse, to the extent it is
23 feasible to do so:

- 24
25 (1) Registers of actions (as defined in Gov. Code, § 69845), calendars, and
26 indexes in all cases; and
27
28 (2) All records in civil cases, except those listed in (c)(1)–~~(9)~~(11).

29
30 **(c) Courthouse electronic access only**

31
32 A court that maintains the following records in electronic form must provide
33 electronic access to them at the courthouse, to the extent it is feasible to do so, but
34 may not provide remote electronic access to these records ~~only to the records~~
35 ~~governed by (b)~~:

- 36
37 (1) Records in a proceeding under the Family Code, including proceedings for
38 dissolution, legal separation, and nullity of marriage; child and spousal
39 support proceedings; child custody proceedings; and domestic violence
40 prevention proceedings;
41
42 (2) Records in a juvenile court proceeding;

- 1 (3) Records in a guardianship or conservatorship proceeding;
2
3 (4) Records in a mental health proceeding;
4
5 (5) Records in a criminal proceeding;
6
7 (6) Records in proceedings to compromise the claims of a minor or a person with
8 a disability;
9
10 ~~(7)(6)~~Records in a civil harassment proceeding under Code of Civil Procedure
11 section 527.6;
12
13 ~~(8)(7)~~Records in a workplace violence prevention proceeding under Code of Civil
14 Procedure section 527.8;
15
16 ~~(9)(8)~~Records in a private postsecondary school violence prevention proceeding
17 under Code of Civil Procedure section 527.85;
18
19 ~~(10)(9)~~Records in an elder or dependent adult abuse prevention proceeding under
20 Welfare and Institutions Code section 15657.03; and
21
22 ~~(10) Records in proceedings to compromise the claims of a minor or a person with~~
23 ~~a disability.~~
24
25 (11) Records in a gun violence prevention proceeding under Penal Code sections
26 18100–18205.
27
28 **(d)–(i) * * ***

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

Instructions: Use this form to register a civil Canadian domestic violence or family violence protective/restraining order in California. Registration means that the order will be entered into a database that all law enforcement in California can view. Although registration is not required for the order to be enforced, it is helpful to have the order in the database. There is no fee to file this form. A certified copy of the order must be submitted with this form. The order must have been issued in English.

1 Information About the Person Registering the Protective/Restraining Order:

- a. My Name: _____
- b. I do not have a lawyer for this case (fill in items c–f below).
 I have a lawyer for this case (fill in your lawyer’s information below and for items c–e):
Name: _____ State Bar No.: _____
Firm Name: _____
- c. Address (If you want to keep your home address private, give a different mailing address instead.):

City: _____ State: _____ Zip: _____
- d. Telephone (optional): _____
- e. E-mail Address (optional): _____
- f. I am (check one):
 protected by the attached order.
 restrained by the attached order.
 a legal guardian of a minor protected by the attached order.
 other (specify): _____

Fill in court name and street address:
Superior Court of California, County of

Fills in case number:
Case Number:

2 Restrained Person

Full Name: _____

Sex: M F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to protected person: _____

3 To the best of my knowledge, the attached order:

- Is a certified copy of a Canadian protective/restraining order.
- Was issued in English by a civil (noncriminal) court in Canada.
- Was made because of domestic violence or family violence.
- Is currently valid and in effect.
- Has not been changed, canceled, or replaced by another court order.
- Expires on (date): _____
month/day/year

This is a Court Order.



4 I ask that the attached order be registered with this court for entry into the California Law Enforcement and Telecommunications System (CLETS). My request is voluntary. I understand that registration of the order is not necessary for enforcement.

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

Date: _____

Type or print your name

Sign your name

(To be completed by court)

The attached Canadian Domestic Violence Protective/Restraining Order is registered and enforceable in California, and can be entered into CLETS, unless it ends or is changed by the court that made it.

Date: _____

Judge (or Judicial Officer)

Court Clerk Must Seal This Form and Attached Foreign Protection Order

This form sets forth the procedure to register a foreign protection order under Family Code section 6404:

1. No fee may be charged for the registration of the foreign protection order.
2. No court hearing is required to register the foreign protection order.
3. The case file containing this form and the attached foreign protection order must be sealed under Family Code section 6404(a).
4. Access to the foreign protection order is allowed only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or on further order of the court.

(Clerk will fill out this part.)

—Clerk’s Certificate—

Clerk’s Certificate
[seal]

I certify that this *Order to Register Canadian Domestic Violence Protective/Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.