



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Rules and Forms: Miscellaneous Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 7.101, 8.883, 8.890, and 8.928; revise forms DE-221 and EA-100	January 1, 2014
Recommended by	Date of Report
Administrative Office of the Courts (AOC) Deborah Brown, Managing Attorney Susan R. McMullan, Senior Attorney Legal Services Office	August 27, 2013
Contact	
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Executive Summary

Various Judicial Council advisory committee members, court personnel, members of the public, and AOC staff have identified errors in rules and forms resulting from inadvertent omissions, typographical errors, or changes in the rules and forms name and numbering systems, as well as changes resulting from legislation. The AOC recommends making the necessary corrections to avoid confusion for court users, clerks, and judicial officers.

Recommendation

The AOC recommends that the Judicial Council make the following changes to the California Rules of Court and Judicial Council forms, effective January 1, 2014:

1. Amend rule 7.101(b)(2) to add a closing parenthesis;
2. Amend rules 8.883(c)(4) and 8.928(c)(4) to correct an internal reference from “10” to “11”;

3. Amend rule 8.890(c)(1) to correct a rule reference from “8.825(c)(2)” to “8.825(b)(2)”;
4. Revise form DE-221, item 11, to correct a code reference from “13655(b)(2)” to “13655(a)(2).” This correction is needed to avoid confusion; and
5. Revise form EA-100, item 10, to correct an internal reference from “Attachment 1-b(3)” to “10(b)(3)”;

The text of the amended rules is attached at pages 3–4, and the revised forms are attached at pages 5-13.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, it is not anticipated that any case management systems would need to be updated to implement them.

Attachments

1. Cal. Rules of Court, rules 7.101, 8.883, 8.890, and 8.928, at pages 3–4
2. Judicial Council forms DE-221 and EA-100, at pages 5–13

1 **Rule 7.101. Use of Judicial Council forms**

2
3 (a) * * *

4
5 (b) **Alternative mandatory forms**

6
7 The following forms have been adopted by the Judicial Council as alternative
8 mandatory forms for use in probate proceedings or other proceedings governed by
9 provisions of the Probate Code:

10
11 (1) * * *

12
13 (2) *Petition for Appointment of Temporary Guardian* (form GC-110) and
14 *Petition for Appointment of Temporary Guardian of the Person* (form GC-
15 110(P));

16
17 (3) * * *

18
19 (c) * * *

20
21 **Rule 8.883. Contents and form of briefs**

22
23 (a)–(b) * * *

24
25 (c) **Form**

26
27 (1)–(3) * * *

28
29 (4) Except as provided in (4011), the type size, including footnotes, must not be
30 smaller than 13-point.

31
32 (5)–(11) * * *

33
34 (d) * * *

35
36 **Rule 8.890. Remittitur**

37
38 (a)–(b) * * *

39
40 (c) **Immediate issuance, stay, and recall**

1 (1) The appellate division may direct immediate issuance of a remittitur only on
2 the parties' stipulation or on dismissal of the appeal on the request or
3 stipulation of the parties under rule 8.825(eb)(2).
4

5 (2)–(3) * * *

6
7 (d) * * *

8

9 **Rule 8.928. Contents and form of briefs**

10

11 (a)–(b) * * *

12

13 (c) **Form**

14

15 (1)–(3) * * *

16

17 (4) Except as provided in (1011), the type size, including footnotes, must not be
18 smaller than 13-point.

19

20 (5)–(11) * * *

21

22 (d) * * *

23

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (Name): _____	CASE NUMBER: _____
DECEDENT	HEARING DATE: _____
<input type="checkbox"/> SPOUSAL <input type="checkbox"/> DOMESTIC PARTNER PROPERTY PETITION	DEPT.: _____ TIME: _____

1. **Petitioner (name):** _____ **requests**
 - a. determination of property passing to the surviving spouse or surviving registered domestic partner without administration (Fam. Code, § 297.5, Prob. Code, § 13500).
 - b. confirmation of property belonging to the surviving spouse or surviving registered domestic partner (Fam. Code, § 297.5, Prob. Code, §§ 100, 101).
 - c. immediate appointment of a probate referee.
2. Petitioner is
 - a. surviving spouse of the decedent.
 - b. personal representative of (name): _____, surviving spouse.
 - c. guardian or conservator of the estate of (name): _____, surviving spouse.
 - d. surviving registered domestic partner of the decedent.
 - e. personal representative of (name): _____, surviving registered domestic partner.
 - f. conservator of the estate of (name): _____, surviving registered domestic partner.
3. Decedent died on (date): _____
4. Decedent was
 - a. a resident of the California county named above.
 - b. a nonresident of California and left an estate in the county named above.
 - c. intestate testate and a copy of the will and any codicil is affixed as Attachment 4c.
(Attach copies of will and any codicil, a typewritten copy of any handwritten document, and an English translation of any foreign-language document.)
5. a. *(Complete in all cases)* The decedent is survived by
 - (1) no child. child as follows: natural or adopted natural, adopted by a third party.
 - (2) no issue of a predeceased child. issue of a predeceased child.
 b. Decedent is is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*
6. *(Complete only if no issue survived the decedent. Check **only** the **first** box that applies.)*
 - a. The decedent is survived by a parent or parents who are listed in item 9.
 - b. The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 9.
7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse or surviving registered domestic partner. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse or surviving registered domestic partner are stated in Attachment 7.
 - a. Attachment 7a¹ contains the legal description *(if real property add Assessor's Parcel Number)* of the deceased spouse's or registered domestic partner's property that petitioner requests to be determined as having passed to the surviving spouse or partner from the deceased spouse or partner. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse or partner was operating or managing at the time of death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

¹ See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances. If required, include in Attachment 7a.

ESTATE OF (Name):	CASE NUMBER:
DECEDENT	

7. b. Attachment 7b contains the legal description (if real property add Assessor's Parcel Number) of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 and Family Code section 297.5 to the surviving spouse or surviving registered domestic partner upon the deceased spouse's or partner's death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.
8. There exists does not exist a written agreement between the deceased spouse or deceased registered domestic partner and the surviving spouse or surviving registered domestic partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. (If petitioner bases the description of the property of the deceased spouse or partner passing to the surviving spouse or partner or the property to be confirmed to the surviving spouse or partner, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)
9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6 are listed below are listed in Attachment 9.

<u>Name and relationship</u>	<u>Age</u>	<u>Residence or mailing address</u>
------------------------------	------------	-------------------------------------

10. The names and addresses of all persons named as executors in the decedent's will and any codicil or appointed as personal representatives of the decedent's estate are listed below are listed in Attachment 10 none

11. The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(a)(2) are listed in Attachment 11.

12. A petition for probate or for administration of the decedent's estate
- a. is being filed with this petition.
- b. was filed on (date):
- c. has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF ATTORNEY)
----------------------	---	-------------------------

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

Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
----------------------	---	---------------------------

Clerk stamps date here when form is filed.

Read *Can an Elder or Dependent Adult Abuse Restraining Order Help Me?* (Form EA-100-INFO) before completing this form. Also fill out Confidential CLETS Information (Form CLETS-001), with as much information as you know.

1 Elder or Dependent Adult in Need of Protection

Full Name: _____

Sex: M F Age: _____

Fill in court name and street address:

2 Person From Whom Protection Is Sought

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

Superior Court of California, County of _____

3 Person Requesting Order

Who is asking the court for protection? (Check a, b, or c):

a. The elder or dependent adult named in ①.b. Name: _____

conservator of the person estate person and estate
of the person named in ①, appointed by (name of court): _____

Case No.: _____

c. Other (name): _____

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use Form MC-025, Attachment.)

Court fills in case number when form is filed.

Case Number: _____**4 Contact Information**

Contact information for the person asking the court for protection:

a. Your Lawyer (if you have one for this case):

Name: _____ State Bar No: _____

Firm Name: _____

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and you want to keep your home address private, you may give a different mailing address instead. The person in ① does not have to give telephone, fax, or e-mail.):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

This is not a Court Order.

5 Description of Protected Person

Describe the person named in ①. (Check a or b):

- a. Is age 65 or older and a resident of California.
- b. Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. (Briefly describe limitations on the attached sheet of paper or Form MC-025. Write "Attachment 5—Description of Protected Person" for a title.)

6 Additional Protected Persons

a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in ①? Yes No (If yes, list them:)

<u>Full Name</u>	<u>Sex</u>	<u>Age</u>	<u>Lives with you?</u>	<u>How are they related to you?</u>
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Check here if there are more persons. Provide the above information for each one on the attached sheet of paper or MC-025. Write "Attachment 6a—Additional Protected Persons" for a title.

b. Why do these people need protection? (Explain below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.

7 Relationship of Parties

How does the person in ① know the person in ②? (Explain below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7—Relationship of Parties" for a title.

8 Venue

Why are you filing in this county? (Check all that apply):

- a. The person in ② lives in this county.
- b. The person in ① was abused by the person in ② in this county.
- c. Other (specify): _____

This is not a Court Order.



9 Other Court Cases

a. Has the person in (1) or any of the persons named in (6) been involved in another court case with the person in (2)? No Yes (If yes, specify the kind of each case and indicate where and when each was filed:)

Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(1) <input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(2) <input type="checkbox"/> Civil Harassment	_____	_____	_____
(3) <input type="checkbox"/> Domestic Violence	_____	_____	_____
(4) <input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(5) <input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(6) <input type="checkbox"/> Eviction	_____	_____	_____
(7) <input type="checkbox"/> Guardianship	_____	_____	_____
(8) <input type="checkbox"/> Workplace Violence	_____	_____	_____
(9) <input type="checkbox"/> Small Claims	_____	_____	_____
(10) <input type="checkbox"/> Criminal	_____	_____	_____
(11) <input type="checkbox"/> Other (specify): _____	_____	_____	_____

b. Are there now any protective or restraining orders in effect relating to the person in (1) or any of the persons named in (6) and the person in (2)? No Yes (If yes, attach a copy if you have one.)

10 Description of Abuse

a. Abuse means either:

- (1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
- (2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

b. Tell the court about the last time the person in (2) abused the person in (1).

(1) When did it happen? (Provide date or estimated date): _____

(2) Who else was there? _____

(3) Describe what happened below.

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(3)—Describe Abuse" for a title.

(4) Was the abuse **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

Yes, only financial abuse. No, the abuse included other forms of abuse described above.

This is not a Court Order.



(5) Did the person in ② use or threaten to use a gun or any other weapon?

Yes No (If yes, explain below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(5)—Use of Weapons" for a title.

(6) Was the person in ① harmed or injured as a result of the acts of abuse described above?

Yes No (If yes, explain below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(6)—Harm or Injury" for a title.

(7) Did the police come? Yes No

If yes, did they give the person in ① or the person in ② an Emergency Protective Order? Yes No

If yes: The order protects (check all that apply):

a. The person in ① b. The person in ② c. The persons in ⑥

Attach a copy of the order if you have one.

c. Is the person in ② a care custodian who deprived the person in ① of (kept from him or her, did not allow him or her to have or receive, or did not provide him or her with) goods or services that the person needed to avoid physical harm or mental suffering?

Yes No (If yes, describe below what the person was deprived of and how that affected him or her):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10c—Deprivation by Care Custodian" for a title.

d. Has the person in ② abused the person in ① at other times?

Yes No (If yes, describe prior incidents and provide dates below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10d—Previous Abuse" for a title.

This is not a Court Order.



Check the orders you want

11 **Personal Conduct Orders**

I ask the court to order the person in **2** not to do the following things to the person in **1** or to anyone to be protected listed in **6**:

- a. Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
- b. Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
- c. Other (specify):
 Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 11c—Other Personal Conduct Orders" for a title.

The person in **2** will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

12 **Stay-Away Orders**

a. I ask the court to order the person in **2** to stay at least _____ yards away from (Check all that apply):

- (1) The elder or dependent adult in **1**
- (2) The persons in **6**
- (3) The home of the elder or dependent adult
- (4) The job or workplace of the elder or dependent adult
- (5) The vehicle of the elder or dependent adult
- (6) Other (specify): _____

b. If the court orders the person in **2** to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? Yes No (If no, explain below):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 12b—Stay-Away Orders" for a title.

This is not a Court Order.



13 **Move-Out Order**

I ask the court to order the person in **(2)** to move out from and not return to the residence at *(address)*:

The person in **(1)** will suffer physical or emotional harm if the person in **(2)** does not leave the residence. The person in **(2)** is not named in the title or lease of the residence, either alone or with others beside the person in **(1)**.

I ask for this move-out order right away to last until the hearing, because:

- a. The person in **(2)** assaulted or threatened the person in **(1)**; and
- b. The person in **(1)** has the right to live at the above residence *(Explain below)*:

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 13—My Right to Residence" for a title.

14 **Guns or Other Firearms and Ammunition**

Does the person in **(2)** own or possess any guns or other firearms? Yes No I don't know

*Unless the abuse is only financial, if the judge grants a protective order, the person in **(2)** will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in **(2)** will also be ordered to turn in to law enforcement or sell to a gun dealer any guns or firearms within his or her immediate possession or control.*

15 **Immediate Orders**

Do you want the court to make any of these orders now that will last until the hearing without notice to the person in **(2)**? Yes No *(If you answered yes, explain why below):*

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 15—Immediate Orders" for a title.

16 **Request to Give Less Than Five Days' Notice**

*You must have your papers personally served on the person in **(2)** at least five days before the hearing, unless the court orders a shorter time for service. (Form EA-200-INFO explains What Is "Proof of Personal Service"? Form EA-200, Proof of Personal Service, may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 16—Request to Give Less Than Five Days' Notice" for a title.

This is not a Court Order.

17 **No Fee to Serve Orders** *If you want the sheriff or marshal to serve (notify) the person in 2 about the orders for free, ask the court clerk what you need to do.*

18 **Lawyer's Fees and Costs**

I ask the court to order payment of my: a. Lawyer's fees b. Court costs

The amounts requested are:

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Check here if there are more items. Put the items and amounts on the attached sheet of paper or Form MC-025 and write "Attachment 18—Lawyer's Fees and Costs" for a title.

19 **Additional Orders Requested**

I ask the court to make the following additional orders (*specify*):

Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 19—Additional Orders Requested" for a title.

20 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

▶ _____
Lawyer's signature

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

Date: _____

Name of person filing this request

▶ _____
Signature of person filing this request

This is not a Court Order.