

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Adopt Notice of the Conservatee's Death (form GC-399)

*Committee or other entity submitting the proposal:*

Probate and Mental Health Advisory Committee

*Staff contact (name, phone and e-mail):* Douglas C. Miller, (818) 558-4178, douglas.c.miller@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: January 29, 2016

Project description from annual agenda: Develop and propose adoption of a form for the conservator to use to give notice of the conservatee's death to persons interested in the conservatorship.

*If requesting July 1 or out of cycle, explain:*

N/A

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

This new form is specifically required by legislation effective January 1, 2016 (Assembly Bill 1085 (Stats. 2015, ch. 92), § 3)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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<b>Title</b>	<b>Action Requested</b>
Probate Conservatorships: Notice of the Conservatee's Death	Review and submit comments by June 14, 2016
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt form GC-399	January 1, 2017
<b>Proposed by</b>	<b>Contact</b>
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Douglas C. Miller JCC Legal Services Office <a href="mailto:douglas.c.miller@jud.ca.gov">douglas.c.miller@jud.ca.gov</a> (818) 558-4178

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### Executive Summary and Origin

To implement a recent statutory change, the Probate and Mental Health Advisory Committee proposes the adoption of a new form to be used by a conservator of the person to give notice to interested persons, and to the court supervising the conservatorship proceeding, that the conservatee has died. .

### Background

Assembly Bill 1085 (Stats. 2015, ch. 92), § 3 added section 2361 to the Probate Code<sup>1</sup>, effective January 1, 2016. The new code section requires the conservator to give written notice of the conservatee's death to interested persons and file a proof of service of the notice with the court. It provides:

A conservator shall provide notice of a conservatee's death by mailing a copy of the notice to all persons entitled to notice under Section 1460 and by filing a proof of service with the court, unless otherwise ordered by the court.

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<sup>1</sup> All code references are to the Probate Code unless otherwise specified.

*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.*

## The Proposal

The Probate and Mental Health Advisory Committee proposes the adoption of a new mandatory Judicial Council form, *Notice of the Conservatee's Death* (form GC-399), to be used by conservators of the person to comply with section 2361 by giving notice to persons interested in the conservatee and the conservatorship proceeding that the conservatee has died. The proposed form also allows the conservator to prove to the court, by completing the proof of service on page 2 of the form and then filing the form, that the form has been properly served.

Both the notice and proof-of-mailing portions of the form are simple and straightforward, suitable for use by self-represented conservators. The most difficult portion is the proof of service, but the instructions given at the top of page 2 should reduce or eliminate any difficulty a conservator might have. Every self-represented conservator who would be required to use the new form will at least have already successfully completed the appointment process, involving many much more difficult issues and Judicial Council forms than this proposed form presents.

The proof of service by mail in the form is similar to the proof of service that is part of the form for giving notice of any court hearing in a conservatorship or guardianship proceeding, *Notice of Hearing—Guardianship or Conservatorship* (form GC-020). But because section 2361 requires the *conservator* to mail the notice of death, this new proposed form is drafted to reflect that the conservator is doing the mailing.

Under section 1460, a notice from the conservator of the person following the death of the conservatee, must be served on the conservatee's spouse or domestic partner and on the persons who have filed a request for special notice in the proceeding (See sections 1460(b)(3) and (4), and 2700).<sup>2</sup>

Having a mandatory form for the notice would avoid the difficulty of reliance on self- or attorney-drafted notices and ensure statewide uniformity of the contents of the notice. Having a combined form of notice and proof of service of the notice would avoid problems for conservators in attaching a separate proof of mailing.

This form is designed for use only by conservators of the person (note the reference to “conservator of the person” below the name and signature blocks on page 1 of the form, and the “Note to Conservator of the Person” on page 2). Section 2361 does not refer specifically to either a conservator of a person or a conservator of an estate. However, new section 2361 is in Chapter 5 of Part 4 of Division 4 of the Probate Code, *Powers and Duties of Guardian or Conservator of the Person*. In addition, the duty to notify interested persons of the conservatee's death appears

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<sup>2</sup> The extended notice required under section 1460(b)(6) could not apply because the conservatorship terminates upon the death of the conservatee, save only the details of the filing of a final account and a petition for its approval and for discharge if there is an estate, a conservator of the estate, and a bond (§§ 1860(a), 1860.5(a)(2), and 2630). Therefore, after the death of the conservatee, the conservator of the person would never need to seek the court's permission to terminate the conservatorship or resign after the conservatee's death. The conservator also would never file a petition for his or her own removal.

to be more compatible with the responsibility of a conservator of a person than a conservator of an estate, in part because the conservatee's death terminates the duties of the conservator of the person, not those of the conservator of the estate.

### **Alternatives Considered**

The committee considered whether to propose a form for use by a conservator of either the person or the estate, but the committee decided, for the reasons stated above, that the proposed form should be, and was intended by the Legislature, for use by a conservator of the person.

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

This proposal is not expected to impose any significant costs other than the usual modest cost of adopting and distributing any new Judicial Council form. The proposed new form should actually save the implementation, training, and other staff costs that courts, and attorneys and parties appearing before them, are now incurring during 2016 in reviewing, preparing, mailing, and filing the many variations in party- or attorney-drafted notices and proofs of service before the proposed form can be adopted and before it can be used.

## **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 staff training and implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Proposed *Notice of the Conservatee's Death* (form GC-399), at pages 4–5.
2. A link to Probate Code section 2361 is:  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PROB&sectionNum=2361](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2361).

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):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>Not Approved by the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <p style="text-align: right;">CONSERVATEE</p>	
<b>NOTICE OF THE CONSERVATEE'S DEATH</b>	CASE NUMBER:

TO ALL PERSONS INTERESTED IN THIS CONSERVATORSHIP:

PLEASE TAKE NOTICE that the above-named conservatee died on (date):

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 OF CONSERVATOR OF THE PERSON)



\_\_\_\_\_  
(SIGNATURE OF CONSERVATOR OF THE PERSON)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): _____  <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER   
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**NOTE TO CONSERVATOR OF THE PERSON:**

You must "serve"—deliver—copies of this *Notice of the Conservatee's Death* ("Notice") to each person who has the right under Probate Code section 1460 to be notified of the date, time, place, and purpose of a court hearing in a conservatorship (the conservatee's spouse or domestic partner, and any person who has requested special notice as provided in section 2700 of the Probate Code). Copies of this Notice may be delivered by mail, but they may also be personally delivered instead of mailed. You must show the court that copies of this Notice have been delivered in ways the law allows. You do this by completing and signing a proof of delivery, also called "proof of service," which then is filed with the original Notice. This page contains a proof of delivery that may be used only to show delivery by mail. To show personal delivery, you must complete and sign a proof of personal delivery to all persons to whom you deliver copies of this document and attach the signed copy of that proof of delivery to this Notice when it is filed with the court. You may use *Proof of Personal Service-Civil* (form POS-20) to show personal delivery.

**PROOF OF DELIVERY BY MAIL**

1. I am the conservator of the person of the above-named conservatee. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (*specify*): \_\_\_\_\_
3. I delivered the foregoing *Notice of the Conservatee's Death* to each person named below by enclosing a copy in an envelope addressed as shown below AND
  - a.  depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
  - b.  placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: \_\_\_\_\_ b. Place mailed (*city, state*): \_\_\_\_\_

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 OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF CONSERVATOR OF THE PERSON)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

	Name of person served	Address ( <i>number, street, city, state, and zip code</i> )
1.		
2.		
3.		
4.		

Continued on an attachment. (*You may use form DE-120(MA)/GC-020(MA) to show additional persons served.*)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings (Revise forms DE-111 and DE-310)

*Committee or other entity submitting the proposal:*

Probate and Mental Health Advisory Committee

*Staff contact (name, phone and e-mail):* Douglas C. Miller, (818)-558-4178, douglas.c.miller@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: January 29, 2016

Project description from annual agenda: Proposal to modify Petition for Probate (form DE-111) to state: whether the decedent was a citizen of a foreign country; whether the will offered for probate is lost; and whether the appointment is sought as a successor personal representative.

*If requesting July 1 or out of cycle, explain:*

N/A

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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<b>Title</b>	<b>Action Requested</b>
Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings	Review and submit comments by June 14, 2016
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise forms DE-111 and DE-310	January 1, 2017
<b>Proposed by</b>	<b>Contact</b>
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Douglas C. Miller Attorney JCC Legal Services (818) 558-4178, douglas.c.miller@jud.ca.gov

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### Executive Summary and Origin

At the request of a superior court probate department's managing staff attorney, the Probate and Mental Health Advisory Committee proposes revisions to the forms used to commence a full decedent estate proceeding or to convey title to a decedent's real and connected personal property as an alternative to such a proceeding to add inquiries about information that may be important in many decedent estates.

### ***Petition for Probate (Form DE-111)***

This form is used to commence a full decedent estate proceeding. There is information that may be important in many decedent estates that is not currently requested by this form.

### **Decedent's Citizenship**

#### ***Background***

The Probate Code establishes notice requirements when a decedent was a citizen of a foreign country. Section 8113 requires notice of the hearing on the petition for probate to be given to a foreign decedent's country's recognized diplomatic or consular office in the United States if there is no will or if the will does not name an executor.<sup>1</sup> If, by intestacy or under the decedent's will, property of the estate is distributable to a citizen of a foreign country, such notice must also

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<sup>1</sup> Unless otherwise stated, all code citations are to the Probate Code.

*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.*

be given to that country's representative in the United States. In many, if not most, cases, some or all heirs or beneficiaries of a foreign decedent are citizens of the same country as the decedent. Form DE-111 does not currently request information about whether the decedent was a citizen of a foreign country.

### ***The Proposal***

This proposal would add a new item 3(b) to this form on page 1. The new item would ask whether the decedent was a citizen of a country other than the United States, and if so, which country. Existing items 3b through 3f on pages 1 and 2 of the form would be redesignated as items 3c through 3g.

This change is proposed to (1) give the earliest possible notice to petitioners, particularly those that are self-represented, that the decedent's foreign citizenship may be important in the case, and (2) advise court staff and judicial officers reviewing the filed petition that notice issues under Probate Code section 8113 may be present.

## **Lost Will or Codicil**

### ***Background***

A lost or destroyed will or codicil may be offered for probate if its contents and due execution can be proved (see § 8223). However, if a lost will or codicil was last in the possession of the testator, he or she was competent until death, and neither the original nor a duplicate original copy<sup>2</sup> can be found after the testator's death, the document is subject to a presumption that it was destroyed by the testator with intent to revoke (§ 6124).

Form DE-111 does not now refer to or request any information about a lost will.

### ***The Proposal***

This proposal would revise the form to require the petitioner to state that the original of a will or any codicil identified in the form has been lost. If so, the petitioner would be required to state reasons why the lost-will presumption of section 6124 does not apply. See new item 3f(3) on page 2 of the form.

Item 3f(2) of the revised form would also be modified to require a written statement of the testamentary words or their substance if the will or any codicil is lost. (A photocopy of a signed or unsigned lost original will or codicil would qualify as the written statement.)

The title caption of this form would also be revised to permit the petitioner to indicate that the will (or codicil) offered for probate is a lost will. This change would follow and improve upon

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<sup>2</sup> A "duplicate original copy" under section 6124 is not a mere photocopy of a signed will. It is a duplicate, but it contains original signatures of the testator and of any witnesses. See *Lauermann v. Superior Court (Muongpruan)* (2005) 127 Cal.App.4<sup>th</sup> 1327, 1330–1331.

the recommendation in California Decedent Estate Practice, § 7.66 (Cont.Ed.Bar. 2d Ed. 2015) to interlineate the word “lost” or “destroyed” before “will” in the title of the form.<sup>3</sup>

## **Successor Personal Representative**

### ***Background***

The committee is advised that attorneys sometimes file self-drafted petitions for appointment of successor administrators, on the assumption that the Judicial Council form should not be used because it does not refer to successor appointments. This practice may present difficulties requiring postponements, additional court and staff time, and filing of revised petitions or supplements because these petitions often fail to include all the information required by the mandatory form (e.g., item 8, the identity, relationship to decedent, and address of all heirs and beneficiaries).

### ***The Proposal***

This proposed change would eliminate this problem. A new item 3g(4) would be added to the form, requiring the petitioner to advise if the petition seeks the appointment of a successor personal representative. Such petitions are filed with or shortly after petitions for removal of the prior representative or upon a vacancy in the position caused by the prior representative’s death or resignation.

This change would also help courts to match the petition for a successor’s appointment with the prior representative’s removal petition—which might have been filed by a different party, or could reveal the possible need for a temporary appointment upon the effective date of the vacancy, pending the hearing on the permanent successor’s appointment (see § 8523). The advice would also alert the court that neither notice of hearing by publication under section 8120 nor notice of administration to creditors under § 9050 will be required (§ 8522(b)).

## ***Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)*** **(form DE-310)**

### **Background**

This form is used to commence an expedited proceeding as a substitute for a full decedent estate administration to transfer real and associated personal property to a decedent’s successors in interest, by intestacy or will, when the total value of all property held by decedent in this state is

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<sup>3</sup> Space limitations prevent the addition of both “lost” and “destroyed,” and “codicil” to the title. But a will destroyed by accident or by anyone other than the competent testator with an intent to revoke is “lost” within the meaning of section 8223. And a codicil is a revision of a will. It is taken together with the will it modifies to become the last will of the decedent.

less than \$150,000.<sup>4</sup> (See Prob. Code, §§ 13151–13158.) The character of the property has particular relevance if there is no will and a surviving spouse or domestic partner is or is not the sole heir, depending solely on the character of the property and the relationship to decedent of the other survivors. In other cases, such as when the spouse or partner is left the entire estate or the specific property sought in the petition under the decedent’s will or there is no surviving spouse or partner, the character of the property may not be important.

### **The Proposal**

The advisory committee proposes to add a new sub-item (3) to item 11 on page 2 of the form, concerning the contents of required attachments to the form, to read: “and (3) the character of the property [to pass from the decedent to the petitioner(s)] as community, separate, or quasi-community.” The committee is particularly interested in input about whether this inquiry should be required in all cases, or only in those cases in which the information is relevant to the proposed distribution of the property.

### **Alternatives Considered**

The committee considered not proposing any changes to these forms. The committee believes, however, that the proposed changes would address and potentially resolve issues that often occur in decedent estates or in the substitute proceedings addressed in form DE-310. Modification of the two mandatory forms is the only way to ensure that the additional information requested by these changes will be provided by all petitioners in both of these proceedings.

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

This proposal will incur the modest costs of distribution of any new or revised form. There will be some court staff costs incurred training for these changes in the first year or so after their adoption, but these should not be significant. On the other hand, the additional information requested in both forms, but particularly in form DE-111, should ultimately lead to lower costs because the information will disclose issues to be addressed at the earliest possible time in the cases, leading to fewer postponements and fewer contested matters.

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<sup>4</sup> Exclusive of many kinds of commonly held interests in property, including joint tenancy interests; certain types of multi-party accounts; vehicles, boats, and trailer homes with state-issued title documentation under the Vehicle or Health and Safety Codes; and modest amounts of compensation owed to the decedent (§§ 13050, 13151).

## 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?
- Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition?

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 2 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

Proposed revised *Petition for Probate* (form DE-111), at pages 6–9;

Proposed revised *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)*, at pages 10–11.



ESTATE OF (name):

DECEDENT

CASE NUMBER:

3. **d. Character and estimated value of the property of the estate** (complete in all cases):

- (1) Personal property: \$ \_\_\_\_\_
- (2) Annual gross income from
- (a) real property: \$ \_\_\_\_\_
- (b) personal property: \$ \_\_\_\_\_
- (3) **Subtotal** (add (1) and (2)): \$ \_\_\_\_\_
- (4) Gross fair market value of real property: \$ \_\_\_\_\_
- (5) (Less) Encumbrances: (\$ \_\_\_\_\_)
- (6) Net value of real property: \$ \_\_\_\_\_
- (7) **Total** (add (3) and (6)): \$ \_\_\_\_\_

- e. (1)  Will waives bond.  Special administrator is the named executor, and the will waives bond.
- (2)  All beneficiaries are adults and have waived bond, and the will does not require a bond. (Affix waiver as Attachment 3e(2).)
- (3)  All heirs at law are adults and have waived bond. (Affix waiver as Attachment 3e(3).)
- (4)  Sole personal representative is a corporate fiduciary or an exempt government agency.

- f. (1)  Decedent died intestate.
- (2)  Copy of decedent's will dated:  codicil dated (specify for each):

are affixed as Attachment 3f(2). (Include typed copies of handwritten documents and English translations of foreign-language documents, or a written statement of the testamentary words or their substance if will or any codicil is lost.)

- The will and all codicils are self-proving (Prob. Code, § 8220).
- (3)  The original of the will and/or codicil identified above has been lost. (State reasons in Attachment 3f(3) why the presumption in Prob. Code, § 6124 of the testator's intentional destruction of will or codicil does not apply.)

g. **Appointment of personal representative** (check all applicable boxes):

- (1) Appointment of executor or administrator with will annexed:
- (a)  Proposed executor is named as executor in the will and consents to act.
- (b)  No executor is named in the will.
- (c)  Proposed personal representative is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(1)(c).)
- (d)  Other named executors will not act because of  death  declination  other reasons (specify):

Continued in Attachment 3g(1)(d).

- (2) Appointment of administrator:
- (a)  Petitioner is a person entitled to Letters. (If necessary, explain priority in Attachment 3g(2)(a).)
- (b)  Petitioner is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(2)(b).)
- (c)  Petitioner is related to the decedent as (specify):
- (3)  Appointment of special administrator requested. (Specify grounds and requested powers in Attachment 3g(3).)
- (4)  Proposed personal representative would be a successor personal representative.

- h. Proposed personal representative is a
- (1)  resident of California.
- (2)  nonresident of California (specify permanent address):

- (3)  resident of the United States.
- (4)  nonresident of the United States.

ESTATE OF (name):

CASE NUMBER:

DECEDENT

4.  Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
5. a. Decedent was survived by (check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))
- (1)  spouse.
- (2)  no spouse as follows:
- (a)  divorced or never married.
- (b)  spouse deceased.
- (3)  registered domestic partner.
- (4)  no registered domestic partner. (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)
- (5)  child as follows:
- (a)  natural or adopted.
- (b)  natural adopted by a third party.
- (6)  no child.
- (7)  issue of a predeceased child.
- (8)  no issue of a predeceased child.
- b. Decedent  was  was 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 if decedent was survived by (1) a spouse or registered domestic partner but no issue (only a or b apply), or (2) no spouse, registered domestic partner, or issue. (Check the **first** box that applies):
- a.  Decedent was survived by a parent or parents who are listed in item 8.
- b.  Decedent was survived by issue of deceased parents, all of whom are listed in item 8.
- c.  Decedent was survived by a grandparent or grandparents who are listed in item 8.
- d.  Decedent was survived by issue of grandparents, all of whom are listed in item 8.
- e.  Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
- f.  Decedent was survived by next of kin, all of whom are listed in item 8.
- g.  Decedent was survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
- h.  Decedent was survived by no known next of kin.
7. (Complete only if no spouse or issue survived decedent.)
- a.  Decedent had no predeceased spouse.
- b.  Decedent had a predeceased spouse who
- (1)  died not more than 15 years before decedent and who owned an interest in **real property** that passed to decedent,
- (2)  died not more than five years before decedent and who owned **personal property** valued at \$10,000 or more that passed to decedent, (If you checked (1) or (2), check only the **first** box that applies):
- (a)  Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
- (b)  Decedent was survived by a parent or parents of the predeceased spouse who are listed in item 8.
- (c)  Decedent was survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
- (d)  Decedent was survived by next of kin of the decedent, all of whom are listed in item 8.
- (e)  Decedent was survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
- (3)  neither (1) nor (2) apply.
8. Listed on the next page are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 5, 6, and 7; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

ESTATE OF <i>(name)</i> :	CASE NUMBER:
DECEDENT	

8.      Name and relationship to decedent                      Age                                      Address

Continued on Attachment 8.

9. Number of pages attached: \_\_\_\_\_

Date:

(TYPE OR PRINT NAME OF ATTORNEY )	▶	(SIGNATURE OF ATTORNEY ) *
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\* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

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 OF PETITIONER)	▶	(SIGNATURE OF PETITIONER)
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(TYPE OR PRINT NAME OF PETITIONER)	▶	(SIGNATURE OF PETITIONER)
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Signatures of additional petitioners follow last attachment.

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  <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:	
MATTER OF (name):  <div style="text-align: right;">DECEDENT</div>	CASE NUMBER:
<b>PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY</b> <input type="checkbox"/> and Personal Property (Estates of \$150,000 or Less)	HEARING DATE AND TIME: DEPT.:

1. Petitioner (name of each person claiming an interest):

**requests** a determination that the real property  and personal property described in item 11 is property passing to petitioner and that no administration of decedent's estate is necessary.

2. Decedent (name):

- a. Date of death:
- b. Place of death (city and state or, if outside the United States, city and country):

3. At least 40 days have elapsed since the date of decedent's death.

- 4. a.  Decedent was a resident of this county at the time of death.
- b.  Decedent was **not** a resident of California at the time of death. Decedent died owning property in this county.
- 5. Decedent died  intestate  testate and a copy of the will and any codicil is affixed as Attachment 5 or 12a.
- 6. a.  No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
- b.  Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.

- 7. Proceedings for the administration of decedent's estate in another jurisdiction: a.  Have **not** been commenced.
- b.  Have been commenced  and completed. (Specify state, county, court, and case number):

8. The **gross value** of decedent's interest in real and personal property located in California as shown by the *Inventory and Appraisal* attached to this petition—excluding the property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by decedent, etc.)—did not exceed \$150,000 as of the date of decedent's death. (Prepare and attach an *Inventory and Appraisal as Attachment 8* (use *Judicial Council forms DE-160 and DE-161* for this purpose). A probate referee appointed for the county named above must appraise all real property and all personal property other than cash or its equivalent. See Prob. Code, §§ 8901, 8902.)

- 9. a. Decedent is survived by (check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))
  - (1)  spouse
  - (2)  no spouse as follows: (a)  divorced or never married. (b)  spouse deceased
  - (3)  registered domestic partner
  - (4)  no registered domestic partner (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)
  - (5)  child as follows: (a)  natural or adopted (b)  natural adopted by a third party
  - (6)  no child
  - (7)  issue of a predeceased child
  - (8)  no 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.)

MATTER OF (name):	CASE NUMBER:
DECEDENT	

10.  Decedent is survived by (complete if decedent was survived by (1) a spouse or registered domestic partner described in Prob. Code, § 37 but no issue (only a or b apply); or (2) no spouse or registered domestic partner described in Prob. Code, § 37, or issue. Check the **first** box that applies.):
- a.  A parent or parents who are listed in item 14.
  - b.  A brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 14.
  - c.  Other heirs under Probate Code section 6400 et seq., all of whom are listed in item 14.
  - d.  No known next of kin.
11. Attachment 11 contains (1) the **legal description** of decedent's real property and its Assessor's Parcel Number (APN) and  a description of personal property in California passing to petitioner, (2) decedent's interest in the property, and (3) the character of the property as community, separate, or quasi-community property.
12. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property  and personal property described in item 11 because each petitioner is:
- a.  (**will**) A beneficiary who succeeded to the property under decedent's will. <sup>1</sup>
  - b.  (**no will**) A person who succeeded to the property under Probate Code sections 6401 and 6402.
13. The specific property interest claimed by each petitioner in the real property  and personal property  is stated in Attachment 13  is as follows (specify):
14. The names, relationships to decedent, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named or checked in items 1, 9, and 10; (2) all other heirs of decedent; and (3) all devisees of decedent (persons designated in the will to receive any property) are listed in Attachment 14.
15. The names and addresses of all persons named as executors in decedent's will  are listed below  are listed in Attachment 15  No executor is named.  There is no will.
16.  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, as determined in cases of future interests under paragraphs (1), (2), or (3) of subdivision (a) of Probate Code section 15804, are listed in Attachment 16.
17.  Decedent's estate was under a  guardianship  conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator  are listed below  are listed in Attachment 17.

18. Number of pages attached: \_\_\_\_\_

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF ATTORNEY)

▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY)\*

\* (Signature of all petitioners also required (Prob. Code, § 1020).)

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 OF PETITIONER)

▶ \_\_\_\_\_  
 (SIGNATURE OF PETITIONER) <sup>2</sup>

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER)

▶ \_\_\_\_\_  
 (SIGNATURE OF PETITIONER) <sup>2</sup>

SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

<sup>1</sup> See Probate Code section 13152(c) for the requirement that a copy of the will be attached in certain instances. If required, include as Attachment 5 or 12a.

<sup>2</sup> Each person named in item 1 must sign.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** Thursday, April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Civil Practice and Procedure: Request for Entry of Default (Revise form CIV-100)

*Committee or other entity submitting the proposal:*  
Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7356, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: 15. Request to Enter Default (form CIV-100).

-Revise item for declaration of non-military service to correctly reflect the law on that point.

-Consider adding an item to reflect the requirements for default judgments under the Fair Debt Buying Practices Act.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

SPR16-\_\_

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Title	Action Requested
Civil Practice and Procedure: Request for Entry of Default	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form CIV-100	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes two revisions to the form used to request entry of a default judgment in a civil case (form CIV-100): (1) add an item to alert the court and parties that compliance with the Fair Debt Buying Practices Act may be required for a default judgment; and (2) revise the declaration of nonmilitary status to clarify the language and include the state law definition of military service. Both proposals originated from suggestions submitted by the Attorney General's office.

### The Proposal

#### Fair Debt Buying Practices Act

The Fair Debt Buying Practices Act, Civil Code sections 1788.50-1788.64 (the Act), took effect January 1, 2014. The Act imposes a number of requirements on debt buyers pursuing collection efforts including that no default judgment may be entered against a debtor defendant unless the debt buyer plaintiff submits certain documents, authenticated through a sworn declaration, to establish specified facts. (§ 1788.60(a) & (b).) If the debt buyer has not complied with the Act's requirements, the court cannot enter a default judgment for the debt buyer. (§ 1788.60(c).)

Attorneys from the Attorney General's office, which was involved in authoring the Act, suggested adding an item regarding the provisions of the Act relating to default judgments to the form used to request such judgments (form CIV-100) because a large number of default judgments are being entered for parties who have not complied with the Act. The proposed

*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.*

revisions to form CIV-100 would add such an item addressing situations in which a debt buyer plaintiff is seeking a clerk's default judgment.<sup>1</sup>

Currently, a plaintiff using form CIV-100 to request a default judgment must indicate whether he or she is seeking a court judgment or a clerk's judgment by checking item 1d or item 1e(2), respectively. Where a plaintiff seeks a *clerk's judgment* under Code of Civil Procedure section 585(a), he or she must also complete item 5 on the form and there is a note following item 1e(2) with directions to this effect. Item 5 allows the plaintiff to comply with Code of Civil Procedure section 585.5, which requires that every application to enter a clerk's default judgment must include an affidavit stating certain facts.

To implement the suggestion from the Attorney General's office, the committee proposes revising item 5 to include a new provision addressing whether the action is or is not subject to the Act, plus an instruction that, if the action is subject to the Act, the debt buyer plaintiff must file further documentation. The heading of item 5 would also be revised to include a reference to Civil Code section 1788.60. In addition, the note following item 1e(2), instructing the parties to complete item 5, would be revised to delete reference to any specific code section.

The committee's proposal does not address situations in which a debt buyer plaintiff is seeking a *court judgment* because presumably the court will ensure compliance with the requirements of the Act before entering a default judgment.

### **Declaration of Nonmilitary Status**

Under the Servicemembers Civil Relief Act (SCRA),<sup>2</sup> a declaration of nonmilitary status must be filed before a default judgment can be entered. (50 U.S.C. App. § 3931.) The SCRA also requires that the court appoint an attorney for a non-appearing defendant who is in military service before entering a default judgment against him or her; a default judgment entered without appointing an attorney may be vacated if it appears that the defendant was prejudiced in defending the action because of his/her military service. (*Ibid.*)

Sections 400-409.14 of the California Military and Veterans Code also protect service member defendants from default judgments, but define "military service" to include state service and certain additional types of federal service. Section 402 of the Military and Veterans Code provides that, before entering judgment against a defaulting defendant, the plaintiff must file in court a declaration stating that the defendant is not in the military service.

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<sup>11</sup> Nothing in the Act specifies whether a default judgment should be entered by the court or a clerk. Section 1788.60, which states the requirements a debt buyer plaintiff must satisfy to obtain a default judgment, also states that the section "is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure," which governs default judgments. According to the Attorney General, some courts handle these matters as court judgments; others, as clerk's judgments. The proposal is intended to allow courts to continue to handle these requests as either court judgments or clerk's judgments.

<sup>2</sup> Effective December 1, 2015, the Servicemembers Civil Relief Act was recodified at 50 U.S.C. § 3901 et seq. That change in numbering is reflected in the proposed revisions.

The declaration of nonmilitary status on current form CIV-100, item 8, references the SCRA, but does not refer to the state law provision.

The committee proposes three revisions to this declaration to more properly reflect the law:

1. Eliminate the “entitled to the benefits” language, which is not required under the statute. This revision would eliminate the confusion that has arisen regarding whether entitlement to the benefits of other provisions of the SCRA affects this declaration.
2. Add the reference to state law.
3. Delete the check box immediately preceding the text of the declaration. The check box is unnecessary because the attorney must also sign the declaration. This revision would eliminate the problems that have resulted when an attorney signs the declaration but fails to check the box.

## **Alternatives Considered**

### **Fair Debt Buying Practices Act**

The committee considered the alternative of making no revisions to the form. However, based on the concerns of the Attorney General’s office that a large number of default judgments are being entered without debt buyer plaintiffs complying with Civil Code section 1788.60, the committee concluded that it was necessary to draw the attention of clerks and litigants to the requirements of the Act.

The committee also considered adding an entirely new item to the form that would ask a series of questions regarding compliance with each individual requirement of the Act. However, because the form is already very full, this alternative would push the form onto another page. The committee concluded that the goal of compliance with the Act could be achieved while keeping the form on one piece of paper.

One other alternative the committee considered was whether to develop a new separate default request form, or an attachment to be used with the current default request form, incorporating the requirements of the Act. Under this alternative, the declaration as to whether the Act is applicable would include an instruction to submit or attach the additional form with the information and documents required by the Act. The committee decided not to pursue this alternative because the cases at issue are brought by collections agencies, which will have attorney representation and thus the ability to draft their own submissions as needed.

### **Declaration of Nonmilitary Service**

The committee considered but rejected the alternative of making no revisions to this item because the changes are needed to comply with state law.

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

This proposal will require training of clerks regarding the new item on the form, and the action they are to take if it is checked. The revisions should, however, clarify requirements already

imposed by law, and make it easier for clerks to properly comply with the Act when working on requests for default.

## **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 2 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**

Proposed amended form CIV-100, *Request for Entry of Default*

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>  <h1 style="margin: 0;">DRAFT</h1>  <h2 style="margin: 0;">03.02.16</h2>  <h1 style="margin: 0;">NOT APPROVED BY JUDICIAL COUNCIL</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff/Petitioner: _____ Defendant/Responden: _____	
<b>REQUEST FOR (Application)</b> <input type="checkbox"/> <b>Entry of Default</b> <input type="checkbox"/> <b>Clerk's Judgment</b> <input type="checkbox"/> <b>Court Judgment</b>	CASE NUMBER: _____

1. TO THE CLERK: On the complaint or cross-complaint filed
- a. on (date):
  - b. by (name):
  - c.  Enter default of defendant (names):
  - d.  I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

*(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)*

- e.  Enter clerk's judgment
  - (1)  for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)  
 Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
  - (2)  under Code of Civil Procedure section 585(a). ***(Complete the declaration on the reverse (item 5).)***
  - (3)  for default previously entered on (date):

2. **Judgment to be entered.**

	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint .....	\$	\$	\$
b. Statement of damages *			
(1) Special .....	\$	\$	\$
(2) General .....	\$	\$	\$
c. Interest .....	\$	\$	\$
d. Costs (see reverse) .....	\$	\$	\$
e. Attorney fees .....	\$	\$	\$
f. <b>TOTALS</b> .....	\$	\$	\$
g. Daily damages were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____			

(\* *Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.*)

3.  (Check if filed in an unlawful detainer case) **Legal document assistant or unlawful detainer assistant** information is on the reverse (complete item 4).

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

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

<b>FOR COURT USE ONLY</b>	(1) <input type="checkbox"/> Default entered as requested on (date): (2) <input type="checkbox"/> Default NOT entered as requested (state reason): Clerk, by _____, Deputy
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Plaintiff/Petitioner: Defendant/Responden:	CASE NUMBER:
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4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant  did  did **not** for compensation give advice or assistance with this form. *(If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state):*

- |  |                            |
|--|----------------------------|
| a. Assistant's name:                   | c. Telephone no.:          |
| b. Street address, city, and zip code: | d. County of registration: |
|  | e. Registration no.:       |
|  | f. Expires on (date):      |

5.  **Declaration under Code Civ. Proc., § 585.5 and Civ. Code, § 1788.60** *(for entry of default under Code Civ. Proc., § 585(a)).*

This action

- a.  is  is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
- b.  is  is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
- c.  is  is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).
- d.  is  is not brought by a debt buyer on a consumer debt sold or resold on or after January 1, 2014. *(If it is, file the materials required under Civ. Code, § 1788.60 of the Fair Debt Buying Practices Act.)*

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a.  **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (*names*):
- b.  **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
  - (1) Mailed on (*date*):
  - (2) To (*specify names and addresses shown on the envelopes*):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees ..... \$
- b. Process server's fees ..... \$
- c. Other (*specify*): ..... \$
- d. .... \$
- e. **TOTAL** ..... \$ \_\_\_\_\_
- f.  Costs and disbursements are waived.
- g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

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 DECLARANT)
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8. **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or Military and Veterans Code section 400(b).

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 DECLARANT)
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## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** Thursday, April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC-100A)

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7356, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: 16. Information sheets for Small Claims plaintiffs and defendants (forms SC-100 and SC-101)

- Revise items in information sheets regarding court interpreters, which are currently incorrect under new law;
- Consider several other minor changes that have been proposed regarding these two forms over past several years.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

**SPR16-**

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Title	Action Requested
Small Claims: Plaintiff's Claim and Information Forms	Review and submit comments by June 15, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms SC-100, SC-100-INFO and SC-100A	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revising two Small Claims forms to conform to the recent change in the law regarding court interpreters in civil cases and to further revise these forms and one other Small Claims form to improve their clarity, consistency with the law, and readability. These proposed revisions are based on suggestions received from judicial officers, court clerks, small claims advisors and members of the advisory committee.

### Background

Both *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100) and *Information for the Plaintiff (Small Claims)* (form SC-100-INFO) include instructions regarding court interpreters for parties who need language assistance. Currently both forms indicate that a fee will be charged for the interpreter if no fee waiver has been granted in the action. (See "What if I don't speak English well" on page 4 of form SC-100 and "Interpreters" on page 2 of form SC-100-INFO.) These provisions were added to the small claims forms to reflect statutes that previously required courts to charge for court interpreters in civil matters and case law stating that courts could provide a free court interpreter for an indigent small claims party who needed one, and should do so if an interpreter was available. (See Government Code sections 26806 and 68092 and *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412.)

Evidence Code section 756, which was enacted effective January 1, 2015, now prohibits courts from charging parties for court interpreters in civil cases. Section 756 also identifies the civil case types to be given preference for receiving court interpretation services in the event that there

*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.*

is not sufficient funding for courts to provide interpreters in all civil cases. (Evid. Code, § 756, subds. (b), (d).) Small claims cases are not among the case types receiving top priority for court interpreter services. The Small Claims Act, however, specifically contemplates interpreters and language assistance. Code of Civil Procedure section 116.550 provides (1) if an interpreter is not available at the first scheduled hearing, the court is to continue the hearing so the litigant may bring someone (not an attorney) with him or her for language assistance, and (2) the court is to make a reasonable effort to maintain and make available to parties a list of interpreters. The Information for the Defendant on *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100) reflects section 116.550, informing the defendant that he or she may have one postponement of the trial date if he or she needs more time to get an interpreter.

## **The Proposal**

### **Court Interpreter Instructions**

To reflect Evidence Code section 756's prohibition on courts charging for interpreter services in civil cases, the committee proposes revising forms SC-100 and SC-100-INFO to eliminate the current references to fees and fee waivers in the items regarding interpreter services. In addition, the committee proposes changing the order of the information provided so that small claims litigants are advised first to ask about the availability of a court-provided interpreter, while also being cautioned that an interpreter might not be available. Litigants are then advised of their alternative option to bring an adult who is not a witness to interpret for them and that they may ask the court for a list of interpreters for hire. (See Code of Civ. Proc., § 116.550.) This revision reflects the goals in the Judicial Council's Strategic Plan for Language Access in the California Courts, approved by the council last year.

The committee also proposes revising the language instructing litigants to ask the court clerk for an interpreter "at least five days before the court date." This deadline is not mandated by a statute or rule of court, and litigants may interpret the language as barring them from requesting an interpreter fewer than five days before their hearing. The committee, aware that without some warning, litigants may not ask for an interpreter until they arrive at court for trial, proposes revising these provisions to instruct litigants to request an interpreter "as far in advance of your court date as possible."

### **Other Proposed Revisions to Form SC-100<sup>1</sup>**

The committee proposes the following additional changes to form SC-100 to improve its clarity, consistency with the law, and readability:

- ***Payday Lender***

Adding a check box to item 1 on page 2 to specify whether the plaintiff is a Payday Lender under the California Deferred Deposit Transaction Law, Financial Code sections 23000 et

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<sup>1</sup> Both forms SC-100 and SC-100-INFO also contain other minor revisions to improve clarity and readability or to correct grammar and syntax.

seq. Identification of a Payday Lender claimant will make it easier for courts to enforce Financial Code section 23036(d), which prohibits treble damages under Civil Code section 1719 based on a deferred deposit transaction.

- ***Name and Address of the Agent for Service of Process***

Revising the defendant's information, item 2 on page 2, to include space for the name and address of the person designated an agent for service where the defendant is a business or public entity. Small claims courts need the information so they know who is responsible for accepting service. By including this space on the form, plaintiffs will be more likely to obtain this information before filing the claim, saving time for court staff. The revision will enable courts to determine whether service by certified mail is valid when the proof of service comes back.<sup>2</sup>

The attachment form to be used for listing additional defendants, *Other Plaintiffs or Defendants (Small Claims)* (form SC-100A), would be similarly revised.<sup>3</sup>

- ***Demand Requirement***

Adding a sentence referring to a demand for the return of property to item 4 on page 3 to make the demand language consistent with Code of Civil Procedure section 116.320(b) which provides that the small claims form must set forth that "the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property ...." This proposed revision also makes form SC-100 consistent with form SC-100-INFO.

- ***Number of Small Claims Filed in a Calendar Year***

Revising the declaration that the plaintiff has not filed more than two small claims cases demanding more than \$2,500 in the calendar year (item 11 on page 3) to conform to section 116.231, subdivision (b), which only requires the plaintiff to make this declaration if the *current* claim demands more than \$2,500.

The committee also proposes moving up current item 11 to follow item 9, which is also a filing restriction, and renumbers it as item 10. This change further improves the form by making the statement regarding no right of appeal more prominent as the last numbered item above the plaintiff's signature.

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<sup>2</sup> In order to make this revision to the form, and have the form remain at its current 5-page length, the space for the name and address of a second defendant has been removed from item 2. As currently proposed, this means that an attachment form will be required in all cases with more than one defendant. Specific comments are requested on whether this is a good use of the space, or whether it would be preferable to include additional room for the name and address of a second defendant and agent for service on the form, even if that makes the form longer.

<sup>3</sup> This form too has been revised to eliminate one space for a defendant's name and address to make room for the agent for service information. This form is currently a single page form. The committee seeks specific comments on whether it would be preferable to keep space for more defendants on the form by lengthening it to two pages (i.e., using the back as well as the front of the form).

*Other Plaintiffs or Defendants (Small Claims)* (form SC-100A) would be similarly revised, renumbering item 4 as item 3.

- ***Description of Small Claims Court***

Revising the description of “**Small claims court,**” which is the first item on the Information for the Defendant section of the form,<sup>4</sup> beginning at page 4, for clarity, accuracy, and to eliminate a misplaced modifier. The proposed revision specifies the types of plaintiffs that may claim up to \$10,000 and those that are limited to \$5,000.

- ***Time to File Notice of Appeal***

Revising the first bullet point under the heading **What if I lose the case?** to more accurately state the time for filing a notice of appeal. Under section 116.750(b), a notice of appeal must be filed not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment to the parties.

- ***Instructions Regarding Settlement and Dismissal***

Revising the item entitled **Settle your case before trial.** This item currently states that, if the parties agree to settle the case, they must both contact the court. The committee proposes revising this item to clarify that, in the event of settlement, only the plaintiff must file a request for dismissal with the clerk. There is no small claims form for dismissals, so the proposed revision also specifies that the plaintiff should file the general civil form, *Request for Dismissal* (form CIV-110).

- ***Defendant’s Claim***

Revising the item entitled **Sue the person who is suing you** to more accurately state the law regarding a defendant’s claim. Code of Civil Procedure section 116.360 provides that a defendant may file a claim against the plaintiff in the same small claims action in an amount not to exceed the jurisdictional limits. The claim need not relate to the same subject or event as the plaintiff’s claim. Section 116.390 provides that if a defendant has a claim against a plaintiff that exceeds the jurisdictional limits *and* relates to the subject of the plaintiff’s claim, the defendant may commence an action in a court of competent jurisdiction and request the small claims court to transfer the plaintiff’s small claims action to that court.

The proposed revision advises defendants regarding (1) the options to file a claim that exceeds the small claims jurisdictional limit in small claims court and waive the excess or file it in the appropriate court for the full value of the claim; (2) the option to move to transfer the plaintiff’s claim under appropriate circumstances, and (3) where on the form to find information regarding small claims jurisdictional limits. The revised language is consistent with that provided to plaintiffs on form SC-100-INFO at page 2 under the heading, “What if the defendant also has a claim?”

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<sup>4</sup> Note that the *Information for the Defendant* section of the form is also provided in Spanish in the same form; any revisions to the English section of the form will also be made to the Spanish section.

## **Other Proposed Revisions to Form SC-100-INFO, *Information for the Small Claims Plaintiff***

The committee proposes the following additional changes to form SC-100-INFO to improve its clarity, consistency with the law, and readability:

- ***Some Rules About the Defendant (including government agencies)***  
Adding item 3 to this section to advise that, with very limited exceptions, the defendant must be served within the state of California. (See Code Civ. Proc., § 116.340.)
- ***How Does the Defendant Find Out About the Claim?***  
Adding a sentence to advise small claims plaintiffs to read *What is “Proof of Service”?* (form SC-104B) and adding a heading number 5 to distinguish information regarding timing and proof of service from the prior section on substituted service.
- ***What If the Defendant Also Has a Claim?***  
Revising this section to more accurately describe when a defendant may file a motion to transfer the plaintiff’s claim out of small claims court. The revision is consistent with the revised language on form SC-100 at page 4, in the section titled **Sue the person who is suing you.**

## **Alternatives Considered**

### **No change**

The alternative of not changing the forms was not pursued because the court interpreter instructions no longer complied with the law. While revising the court interpreter provisions, the advisory committee considered a number of other proposed revisions that had been received but deferred over the past several years. The committee rejected some of these proposals and decided to proceed with others, for the reasons described above.

### **Deleting court interpreter instructions**

The original proposal regarding court interpreter instructions was to delete these provisions from the forms because different courts follow different procedures. The advisory committee concluded the instructions should be revised and not deleted because the Small Claims Act specifically addresses language assistance, the information is helpful to litigants, and the instructions do not hamper courts’ ability to devise their own procedures that conform to the law.

The advisory committee also considered whether to delete any reference to a time frame for a litigant to request an interpreter, but concluded that providing no guidance on this point could result in more litigants asking for language assistance for the first time when they arrive at court for trial.

### **Revising the information regarding moving to vacate the judgment**

The advisory committee considered a proposal to revise the second bullet point under the heading **What if I lose the case?** on page 4 of form SC-100, which informs a defendant who was not at trial of the procedure for moving to vacate the judgment. The proposal to change the plain language description to more technically correct language was intended to better describe this process. The advisory committee concluded the current language was accurate and more helpful to small claims litigants than the proposed revisions.

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

This proposal will impose a need for training of court clerks, staff, and judicial officers regarding the new information to be found on the forms. It will also impose a cost in producing or procuring new forms. As a result of these revisions, the advisory committee expects that courts will save staff time in explaining formerly confusing provisions and clarifying small claims procedures, and in determining the identity of appropriate agents for service. At the same time, litigants will benefit from forms that are more accurate, informative, and readable.

## **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?
- Should either or both form SC-100 or form SC-100A be made a page longer in order to allow space for an additional defendant name and address to be included on the forms? See discussion at footnotes 2 and 3.

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 2 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**

Proposed amended forms SC-100, SC-100-INFO, and SC-100A

Clerk stamps date here when form is filed.

**Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

**Aviso al Demandado:**

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:****Case Name:****Order to Go to Court****The people in ① and ② must go to court:** (Clerk fills out section below.)

Trial Date	→ Date	Time	Department	Name and address of court if different from above
	1. _____	_____	_____	_____
	2. _____	_____	_____	_____
	3. _____	_____	_____	_____
Date: _____		Clerk, by _____, Deputy		

**Instructions for the person suing:**

- You are the Plaintiff. The person you are suing is the Defendant.
- *Before* you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms).
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.



Plaintiff (list names):

Case Number: \_\_\_\_\_

**1 The Plaintiff (the person, business, or public entity that is suing) is:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

**If more than one Plaintiff, list next Plaintiff here:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

- Check here if more than two Plaintiffs and attach form SC-100A.
- Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.
- Check here if any Plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

**2 The Defendant (the person, business, or public entity being sued) is:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

**If the Defendant is a business or public entity, list the person authorized for service of process:**

Name: \_\_\_\_\_ Job title \_\_\_\_\_

Address: \_\_\_\_\_

Street City State Zip

- Check here if more than one Defendant and attach form SC-100A.
- Check here if any Defendant is on active military duty, and write his or her name here: \_\_\_\_\_

**3 The Plaintiff claims the Defendant owes \$ \_\_\_\_\_ . (Explain below):**

a. Why does the Defendant owe the Plaintiff money?

\_\_\_\_\_  
\_\_\_\_\_

When did this happen? (Date): \_\_\_\_\_

b. If no specific date, give the time period: Date started: \_\_\_\_\_ Through: \_\_\_\_\_

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

\_\_\_\_\_  
\_\_\_\_\_

- Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.



Plaintiff (list names):

Case Number:

4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the Defendant to give you the property. Have you done this?

Yes No If no, explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. (1) Where the Defendant lives or does business. (2) Where the Plaintiff's property was damaged. (3) Where the Plaintiff was injured. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract. b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).) c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.) d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.) e. Other (specify):

6 List the zip code of the place checked in 5 above (if you know):

7 Is your claim about an attorney-client fee dispute? Yes No If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here:

8 Are you suing a public entity? Yes No If yes, you must file a written claim with the entity first. A claim was filed on (date): If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California? Yes No If yes, the filing fee for this case will be higher.

10 Is your claim for more than \$2,500? Yes No If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: Plaintiff types or prints name here Plaintiff signs here Date: Second Plaintiff types or prints name here Second Plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)



**“Small claims court”** is a special court where claims for \$10,000 or less are decided. Individuals, including “natural persons” and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities and other businesses are limited to claims of \$5,000. (See below for exceptions.\*) The process is quick and cheap. The rules are simple and informal. You are the *Defendant*—the person being sued. The person who is suing you is the *Plaintiff*.

**Do I need a lawyer?** You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

**How do I get ready for court?** You don’t have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read “Be Prepared for Your Trial” at [www.courts.ca.gov/smallclaims/prepare](http://www.courts.ca.gov/smallclaims/prepare).

**What if I need an accommodation?** If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

**What if I don’t speak English well?** Ask the civil or small claims court clerk for an interpreter as far in advance of your court date as possible. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for you or ask the court for a list of interpreters for hire.

**Where can I get the court forms I need?** Go to any courthouse or your county law library, or print forms at [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms).

**What happens at the trial?** The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

**What if I lose the case?** If you lose, you *may* appeal. You’ll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge’s decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see [www.courts.ca.gov/smallclaims/appeals](http://www.courts.ca.gov/smallclaims/appeals).

### Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, the Plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the Plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant’s Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter or event that is the subject of the Plaintiff’s claim, you may file your claim in the appropriate court and file a motion to transfer the Plaintiff’s claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled “Small Claims Court”.
- **Agree with the Plaintiff’s claim and pay the money.** Or, if you can’t pay the money now, go to your trial and say you want to make payments.
- **Let the case “default.”** If you don’t settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

### What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



### Need help?

Your county’s Small Claims Advisor can help for free.

Or go to [www.courts.ca.gov/smallclaims/advisor](http://www.courts.ca.gov/smallclaims/advisor).

\* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).)



La “**Corte de reclamos menores**” es una corte especial donde se deciden casos por \$5,000 ó menos. Una “persona natural” (que no sea un negocio ni una entidad pública) puede reclamar hasta \$10,000. Una “persona natural” (que no sea un negocio ni una entidad pública), que incluye un dueño único, generalmente puede reclamar hasta \$10,000.

(Vea abajo para las excepciones.\*) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado—la persona que se está demandando. La persona que lo está demandando es el Demandante.

### ¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero *no puede* tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

### ¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos y pruebas que apoyan su caso. Y lea “Esté preparado para su juicio” en [www.courts.ca.gov/reclamosmenores/preparesse](http://www.courts.ca.gov/reclamosmenores/preparesse).

### ¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accomodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

### ¿Qué pasa si no hablo inglés bien?

Traiga a un adulto que no sea testigo para que le sirva de intérprete. O pida al secretario de la corte que le asigne uno. Si quiere que la corte le asigne un intérprete, lo tiene que pedir como mínimo menos cinco días antes de la fecha en que tenga que ir a la corte. Es posible que no haya disponible un intérprete proporcionado por la corte o que tenga que pagar una cuota por emplear un intérprete de la corte, a menos que tenga una exención de cuotas. Puede pedir a la corte una lista de intérpretes y la Solicitud de exención de cuotas de la corte (formulario FW-001S).

**¿Dónde puedo obtener los formularios de la corte que necesito?** Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms) (página está en inglés).

### ¿Qué pasa en el juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

### ¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si *no* estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea [www.courts.ca.gov/reclamosmenores/apelaciones](http://www.courts.ca.gov/reclamosmenores/apelaciones).

**¿Tengo otras opciones?** Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- **Demandar a la persona que lo demandó.** Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

**¿Qué hago si necesito más tiempo?** Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



**¿Necesita ayuda?** El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O vea Información por condado en [www.courts.ca.gov/reclamosmenores/asesores](http://www.courts.ca.gov/reclamosmenores/asesores).

\* **Excepciones:** Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).)

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of, and some general information about, the small claims court. It may also be helpful for the person who is sued.

**WHAT IS SMALL CLAIMS COURT?**

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 if you are a business or public entity or for more than \$10,000 if you are a natural person (including a sole proprietor). *(See below for reference to exceptions.)\** If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

**WHO CAN FILE A CLAIM?**

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court.

**You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**

4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear*, form SC-109.)

**WHERE CAN YOU FILE YOUR CLAIM?**

You must sue in the right court and location. This rule is called **venue**. Check the court's local rules if there is more than one court location in the county handling small claims cases. If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard. The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;

3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken; or
5. For a retail installment account or sales contract or a motor vehicle finance sale:
  - a. Where the buyer lives;
  - b. Where the buyer lived when the contract was entered into;
  - c. Where the buyer signed the contract; or
  - d. Where the goods or vehicle are permanently kept.

**SOME RULES ABOUT THE DEFENDANT (including government agencies)**

1. You must sue using the defendant's *exact legal name*. If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit at [www.ss.ca.gov/business](http://www.ss.ca.gov/business). Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.

2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

3. **With very limited exceptions, the defendant must be served within the state of California.**

**HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?**

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF.** You should read form SC-104B, *What is "Proof of Service"?* Here are four ways to serve the defendant:

1. **Service by a law officer**—You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server**—You may ask anyone who is *not a party* in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when

the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.

3. **Certified mail**—You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**

4. **Substituted service**—This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

\* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

4. **Substituted service** (*continued*) A copy of your claim must be left at the defendant's business with the person in charge; **OR** at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.
5. **Timing and proof of service**—No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.  
The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

### WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant**) will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim*. The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 or \$10,000 if the defendant is a natural person (*see exceptions on page 1\**). If the value of the claim is more than this amount, the defendant may either give up the amount over \$5,000 or \$10,000 and sue in the small claims court or sue in the appropriate court for the full value of the claim. If the defendant's claim relates to the same contract, transaction, matter or event that is the subject of your claim and exceeds the value amount for small claims court, the defendant may file the claim in the appropriate court and file a motion to transfer your claim to that court to resolve both claims together.

The defendant's claim must be served on the plaintiff at least *five days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *one day* before the trial. Both claims will be heard by the court at the same time.

### WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily, or you may ask the clerk to issue a **subpoena**. A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order before the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

### WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and *is owed* the money is called the **judgment creditor**. The party who loses the case and owes the money is called the **judgment debtor**. Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment*. The clerk may also have this information on a separate sheet.

### HOW TO GET HELP WITH YOUR CASE

1. **Lawyers**—Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
2. **Interpreters**—If you do not speak English well, ask the civil or small claims court clerk for an interpreter as far in advance of your court date as possible. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for you or ask the court for a list of interpreters for hire.
3. **Waiver of fees**—The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court**—If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays**.
5. **Parties who are in jail**—If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations**—If you have a disability and need assistance, immediately ask the court to help accommodate your needs. If you are hearing impaired and need assistance, notify the court immediately.
7. **Forms**—You can get small claims forms and more information at the California Courts Self-Help Center website ([www.courts.ca.gov/smallclaims](http://www.courts.ca.gov/smallclaims)), your county law library, or the courthouse nearest you.
8. **Small claims advisors**—The law requires each county to provide assistance in small claims cases free of charge. (*Small claims advisor information*):

This form is attached to form SC-100, item 1 or 2.

**1 If more than 2 plaintiffs (person, business, or entity suing), list their information below:**

Other plaintiff's name: \_\_\_\_\_

Street address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Is this plaintiff doing business under a fictitious name?  Yes  No *If yes, attach form SC-103.*

Other plaintiff's name: \_\_\_\_\_

Street address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Is this plaintiff doing business under a fictitious name?  Yes  No *If yes, attach form SC-103.*

Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.

**2 If more than 1 defendant (person, business, or entity being sued), list their information below:**

Other defendant's name: \_\_\_\_\_

Street address: \_\_\_\_\_ Phone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

*If this defendant is a business or public entity, list the person authorized for service of process:*

Name: \_\_\_\_\_ Job title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Check here if more than 2 defendants and fill out and attach another form SC-100A.

**3 Is your claim for more than \$2,500?  Yes  No**

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

**4 I understand that by filing a claim in small claims court, I have no right to appeal this claim.**

I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

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

\_\_\_\_\_  
Type or print your name

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

\_\_\_\_\_  
Type or print your name



\_\_\_\_\_  
*Sign your name*



\_\_\_\_\_  
*Sign your name*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Civil Forms: Order of Examination (revise form SC-134 and form AT-138/EJ-125)

*Committee or other entity submitting the proposal:*  
Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Anne M. Ronan, 415-865-8933, [anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 2015

Project description from annual agenda: Order of examination of judgment debtor

- Revise form SC-135, Application and Order to Produce Statement of Assets and to Appear for Examination to correct inconsistency in items (one item stating it "may" be served by a registered process server, etc., while the instruction says it "must" be so served). At same time add formation concerning impact of service by law enforcement. Lack of such information leads to small claims judgment creditors making futile requests for bench warrants due to inadequate service, resulting in expense to parties and extra hearings for courts.
- Consider revising form EJ-125, the parallel form for other types of civil cases, which also lacks any notice of the consequence if service is not made by a law enforcement officer.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Civil Forms: Order of Examination	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms SC-134 and EJ-125	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne M. Ronan, 415-865-8933,
Hon. Raymond Cadei, Chair	<a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a>

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### Executive Summary and Origin

This proposal, initially raised by a superior court commissioner who handles small claims cases, would revise *Order to Produce Statement of Assets and Appear for Examination* (form SC-134), to clarify in the instructions that, while service may be completed by any means proper for serving a summons, service *must* be by a registered process server or sheriff in order to be enforced by the court. The format of the Small Claims form has also been revised to make the provisions of the order easier to read. The parallel form for use in civil actions generally, *Application and Order for Appearance at Examination* (form AT-138/EJ-125), would also be revised to include a similar instruction regarding service by a law officer.

### Background

Judgments in small claims cases may be enforced under the same provisions applicable to all civil cases. See Code Civ. Proc. § 116.820.<sup>1</sup> Therefore small claims judgment creditors, just like judgment creditors in other types of civil cases, may examine judgment debtors and third parties to determine if there are attachable assets, and may seek sanctions for a party's failure to appear for such an examination just as any other civil litigant may. The regular civil form for this purpose is the *Application and Order for Appearance at Examination* (form AT-138/EJ-125), which may be used in enforcing small claims judgments as well as any other civil judgments.

Small claims judgment debtors, however, have an additional procedure that they may use in collecting on judgments, i.e., obtaining information via a statement of the judgment debtor's assets. The court clerk sends a blank *Judgment Debtor's Statement of Assets* (form SC-133)<sup>2</sup> to

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<sup>1</sup> All statutory references hereafter are to the Code of Civil Procedure unless otherwise noted.

<sup>2</sup> A copy of that form is at <http://www.courts.ca.gov/documents/sc133.pdf>.

*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.*

the judgment debtor along with the notice of entry of judgment. If a judgment debtor “willfully fails” to complete and return that statement, the judgment debtor may ask the court to enforce sanctions under section 708.170—the provision authorizing a court to issue a bench warrant if a party has not appeared in response to an order for examination. See § 116.830. Because such sanctions are only available under section 708.170 if an order has been served by law enforcement, failure to complete the form sent by mail by the clerk is not sufficient to support such sanctions—there must be a court order, and the order must have been served by law enforcement. For that reason, the *Application and Order to Produce Statement of Assets and To Appear for Examination* (form SC-134) was developed. As is noted on the back of that form, it is intended for use when the judgment creditor is seeking completion of the statement of assets form as well as the examination of the judgment debtor. If the small claims judgment creditor only wants the debtor’s examination, form AT-138/EJ-125 should be used.

### **The Proposal**

Both form SC-134 and form AT-138/EJ-125 include a provision within the order on the form (item 3 on each) that the order “may” be served by a law enforcement officer. The statute authorizing the judgment creditor to examine the judgment debtor provides that the order for examination is to be served “in the manner specified in Section 415.10.” See § 708.110(d); see also § 708.120(b) (service of order requiring third party’s appearance must be by personal delivery to that person). So the orders on the forms are correct that a judgment creditor is not *required* to have the order for examination served by law enforcement.<sup>3</sup> However, a problem with other means of service arises if the judgment debtor or third party fails to appear for the examination. The court is only authorized to issue a bench warrant or apply other sanctions (e.g., award attorney’s fees) in those situations in which the order has been served by a sheriff, marshal, registered process server, or person specifically appointed by the court in the order itself. § 708.170. So although the forms at issue here are correct in saying in item 3 that the service may (rather than *must*) be served by a law enforcement officer or registered process server (or a server appointed by the court), service by anyone else not sufficient if the party seeks court enforcement of the order.

The revised forms add the instructions to the judgment creditor that, *in order to be enforced by the court*, the order must be served by law enforcement. On both forms, this information would be placed on the second page (the back of the form), in revised paragraph 4 in the Instructions for Applicant on the back of form SC-134, and in a new box titled “Information for Judgement Creditor Regarding Service” on the back of form EJ-125.

### ***Other revisions***

While revising the forms to address the issue of service, other minor revisions are being proposed at the same time. To begin, a new item has been added on the second page of both forms with instructions for those who are hard of hearing for requesting needed accommodations

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<sup>3</sup> Note that while the current SC-135 form is correct on the front, the instructions on the back are incorrect, stating that the order *must* be served by law enforcement.

for a court appearance. This information is being included on all new or revised Judicial Council forms that set a hearing or other court appearance, as these two forms do.

Form AT-138/EJ-125 has also been revised to delete a requirement that the description of the property in the box on the second page titled “Instructions re Appearance of a Third Party” must be made “using typewritten capital letters”.

Form SC-134 has been further revised by reorganizing the top of the first page of the form, where space has been made to allow a court to file-stamp the form. In addition, the provisions of item 2 of the Order to Produce Statement of Assets and to Appear for Examination on that form has been reformatted to make them easier for the judgment debtor to understand. A parenthetical has also been added to explain that the statement of assets should have been provided by the judgment debtor within 30 days after notice of entry of judgment.

The instructions on the second page of form SC-134 have also been reorganized, moving the current last paragraph to the top, and renumbering all the paragraphs.

### **Alternatives Considered**

The alternative of not revising the two forms was considered by the committee, but rejected in light of the burden on both parties and the courts resulting from parties’ not understanding that a bench warrant cannot be issued for a failure to appear at a debtor’s examination if the order to appear has not been served by law enforcement, registered process server, or a party expressly authorized by the court to perform the service. Correcting and adding instructions to the forms regarding service should eliminate needless appearances by parties seeking court enforcement of orders on which bench warrants cannot be issued.

The committee also considered further revising the forms to split each one in two. Form AT-138/EJ-125 and form SC-134 each contain both the application for an order and the order to appear in a single form. The committee considered whether each of the forms should be split into one form for the application and a separate form for the order. It has been a policy to split such forms in recent years, in order to have Judicial Council forms be either entirely incoming to the court, or entirely outgoing, rather than a mixture of the two, particularly to make electronic filing, issuance, and service simpler. Court administrator members of the committee who specifically addressed this issue, however, indicated both that the combined forms are easier for the clerks to deal with at the window, and that there is now software that allows the courts to handle electronically filing, and executing and issuing the forms as they currently exist, without undue burden to the court.

Because this is an ongoing issue that needs to be addressed with Judicial Council forms, the committee would like commenters, particularly courts, to consider whether forms such as the ones in this proposal be split into separate incoming and outgoing forms, or be left as forms that may be both filed into the court and then later issued by the court.

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

The revisions proposed to these forms should clarify to the parties that, if they want to be able to seek a bench warrant or other court enforcement for non-appearance, then they must have the forms served by law enforcement or other appropriate individuals. This should result in some cost-saving by eliminating the need for second applications and orders when the first cannot be enforced, and ultimately fewer hearings on orders of examination. Courts will need training to recognize the new forms and, should the forms be issued as part of electronic case management systems, the forms will need to be revised within that system.

### **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?
- Should forms such as the ones in this proposal, that are both incoming to the court and outgoing from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court?

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 2 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]**

Proposed revised Judicial Council forms SC-134 and AT-138/EJ-125

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  <h1 style="margin: 0;">DRAFT</h1>  <h2 style="margin: 0;">03-24-16</h2>  <h3 style="margin: 0;">not approved by Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
<b>APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION</b> <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person	CASE NUMBER: _____

**ORDER TO APPEAR FOR EXAMINATION**

1. TO (name): \_\_\_\_\_
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
  - a.  furnish information to aid in enforcement of a money judgment against you.
  - b.  answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
  - c.  answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date: _____	Time: _____	Dept. or Div.: _____	Rm.: _____
Address of court <input type="checkbox"/> shown above <input type="checkbox"/> is: _____			

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):

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

\_\_\_\_\_  
JUDGE OR REFEREE

**This order must be served not less than 10 days before the date set for the examination.**

**IMPORTANT NOTICES ON REVERSE**

**APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION**

4.  Judgment creditor     Assignee of record     Plaintiff who has a right to attach order  
 applies for an order requiring (name): \_\_\_\_\_ to appear and furnish  
 information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
  - a.  the judgment debtor.
  - b.  a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7.  This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8.  The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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 DECLARANT)

(Continued on reverse)

### Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server or the person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court.

### IMPORTANT NOTICES ABOUT THE ORDER

#### APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)

**NOTICE TO JUDGMENT DEBTOR** If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

#### APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

**(1) NOTICE TO PERSON SERVED** If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

**(2) NOTICE TO JUDGMENT DEBTOR** The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows (*Describe the property or debt*) :

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

#### APPEARANCE OF A THIRD PERSON (ATTACHMENT)

**NOTICE TO PERSON SERVED** If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

#### APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ORGANIZATION

It is your duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with your property and debts.



**Request for Accommodations.** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Forms: Writ of Execution (revise form EJ-130)

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Anne M. Ronan, 415-865-8933, [anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 2014 and December 2015

Project description from annual agenda: Writ of Execution. Consider possible changes to form EJ-130, particularly to amend the following:

- Clarification of identifiers of type of underlying action (civil limited or civil unlimited) mandated by statute;
- Clarification of item 24 and/or addition of identifier on form as to whether an underlying real property action is an unlawful detainer and, if so, identifier as to whether on a foreclosed property (to help implement new law)
- Correction of item 19(a) re calculation of interest.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Civil Procedures and Forms: Writ of Execution	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form EJ-130	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond A. Cadei, Chair	Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee is proposing several minor revisions to the *Writ of Execution*, form EJ-130, to facilitate its use. The changes are based on requests from court administrators, levying officers, private practitioners, and legal aid offices.

### The Proposal

Changes are being proposed to three different sections of the *Writ of Execution*, as described below.

#### Identifier for limited v. unlimited case

Most writs of execution are prepared by parties on the Judicial Council form *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. While the use of the form is not mandated, the form is the most frequently used format in which such writs are presented to the court. Form EJ-130 was revised a few years ago, at the recommendation of this advisory committee, to include check boxes at the top of form to implement a bill that required that a writ of execution, possession, or sale specify, among other things, whether the underlying case is a limited or unlimited civil action.<sup>1</sup> Code Civ. Proc. § 699.520. In an effort to make the form easier for self-represented litigants to use, and in response to requests from some courts, the check boxes currently indicate the type of case as limited, unlimited, small claims, or other. Although at the time that revision was circulated for public comment, no objections were raised

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<sup>1</sup> The intent of this required designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) should a claim of exemption be sought by the judgment debtor.

*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.*

to having the multiple boxes, some sheriff's offices refuse to accept a form that has the "small claims" box checked even though, by law, a small claims case is a limited civil action. As a result, it has been suggested by some court clerks and by some collection agencies that the check boxes be limited to only "limited cases" and "unlimited cases". That revision has been made on the proposed form, with an indicator that limited cases include small claims cases.

### **Possession of Real Property**

Current item 24a, for a writ of possession of real property, assumes that the underlying action is one for unlawful detainer. It is not possible for a judgment creditor who has obtained judgment for possession in another kind of action (such as quiet title or ejectment) to fill out the current form completely, because the item requires all parties complete the item addressing prejudgment claims of right of possession, even though such claims are only pertinent in unlawful detainer actions. See §715.010(5)–(7). The form has been modified to reflect that item 24a need only be completed in unlawful detainer actions.

### **Calculations of amount to enforce (items 11-20)**

Several attorneys, court clerks, and public agencies including the Regional Human Rights/Fair Housing Commission in Sacramento have complained over the past several years that the items on the current form used to calculate the total amount the levying officer is to collect are non-intuitive and confusing, particularly as related to how partial payments are credited toward the amount owed, and how interest is to be calculated or credited.<sup>2</sup> The revised form attempts to improve this section. No substantive changes have been made to the section, only revisions to the way it has been organized.

First, the item for interest accrued after the original judgment has been moved up on the list of items (see item 14), so that it is now added to the amounts due (with a new subtotal line, at item 15<sup>3</sup>) before any credits are applied.. This is an attempt to make the form more intuitive, with all amounts that increase the amount due listed above any partial payments that have been made toward those amounts.

Second, the item for stating the amount of any partial payments has been split into two subparts: one for the payment amount to be credited toward accrued interest and one for the amount to be credited toward the judgment principal. See item 16 on proposed form. The goal is to make it easier for parties to understand that the interest may be applied to one before the other. There is currently no place to show how that application has been made.

Finally, the item and instructions for calculating the daily interest has been revised to more correctly reflect the law. Currently, the form calls for the interest to be calculated on the amount of the judgment plus costs, minus *all* credits. See item 19 on current form. This means that the

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<sup>2</sup> The amount of interest due is actually calculated separately and stated on a declaration under penalty of perjury on *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), but is added to the amount due on this form.

<sup>3</sup> The remaining items on the form have all been renumbered in light of the addition of this item.

daily interest rate is being calculated on an amount that has been reduced by the full amount of partial payments received, even those amounts that should be credited only toward accrued interest rather than towards the judgment principal. In the revised form, with the credit for partial payments identified as being toward interest or toward principal, it is only the amount credited toward the judgment principal (item 16a) that is to be subtracted from the subtotal of total judgment plus costs when calculating the daily interest rate.<sup>4</sup>

## **Alternatives Considered**

### **No action**

The committee considered not recommending any revisions to this form. However, in light of the need to revise the writ of possession of real property to conform to law, and the problems being caused by having a small claims box on the current form, the committee concluded that it was important to revise the form. While making those revisions, the committee decided to tackle the section for calculating the amount to be collected, in light of the confusion that section seems to engender.

### **Other potential revisions**

***Foreclosed Property*** The committee considered, but rejected, some other suggestions it had received regarding this form.

***Foreclosed Property*** One group proposed that the item on the writ of possession of real property be further revised, to indicate whether the writ is being sought in a case brought on a foreclosed property, so under Code of Civil Procedure section 1161a. Under that provision, in unlawful detainer cases on foreclosed property, an occupant not named as a party in the case may file a claim of right to possession at any time before judgment or even after judgment until writ is executed. It was suggested that such an indicator would make it easier for a sheriff to know whether the tenant in possession could raise a claim for a right of possession up to time of enforcement of the writ.

The committee decided to not make this revision, for two reasons. First, the committee concluded that, should an individual give a levying officer a claim for right of possession, the sheriff, if not already aware that the property was a foreclosure, can contact the court to determine whether the case has been brought under Code of Civil Procedure 1161a (an action under that code section must be identified as such on the first page of the complaint). Second, the statute allowing for such a late claim for possession, is currently set to sunset in January 2, 2019, only two years after any revisions would go into effect. In light of the fact that adding another item to this already dense form would add another page to the form, making it into a 3-page form), the committee concluded that the change would be more burdensome than helpful.

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<sup>4</sup> The language that the daily interest should not be calculated on any amounts due to the court, rather than the judgment creditor, remains, and has been clarified.

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

These forms are completed by the parties, but must be reviewed and issued by court clerks. Therefore self-help centers and clerks will need training to recognize and understand the revised items. It is hoped that, once initial training is completed, the revised forms will be easier for parties to complete correctly and for court clerks to review, ultimately benefitting the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within that system.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] 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 2 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**

Please provide a link to reference documents such as statutes rather than attaching them.

1. Revised form EJ-130

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): <input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	<b>FOR COURT USE ONLY</b>  <h1 style="margin:0;">DRAFT</h1> <h2 style="margin:0;">03/07/16</h2>  <h1 style="margin:0;">Not Approved by Judicial Council</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff: Defendant:	<input type="checkbox"/> <b>Limited Civil Case</b> (including Small Claims)  <input type="checkbox"/> <b>Unlimited Civil Case</b>
<input type="checkbox"/> <b>EXECUTION (Money Judgment)</b> <b>WRIT OF</b> <input type="checkbox"/> <b>POSSESSION OF</b> <input type="checkbox"/> <b>Personal Property</b> <input type="checkbox"/> <b>SALE</b> <input type="checkbox"/> <b>Real Property</b>	

1. **To the Sheriff or Marshal of the County of:**

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. **To any registered process server:** You are authorized to serve this writ only in accord with CCP 699.080 or CCP 715.040.

3. (Name):

is the  judgment creditor     assignee of record    whose address is shown on this form above the court's name.

4. **Judgment debtor** (name, type of legal entity stated in judgment if not a natural person, and last known address):

Additional judgment debtors on next page

9.  See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.

10.  This writ is issued on a sister-state judgment.

11. Total judgment \$ \_\_\_\_\_

12. Costs after judgment (per filed order or memo CCP 685.090) \$ \_\_\_\_\_

13. Subtotal (add 11 and 12) \$ \_\_\_\_\_

14. Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) \$ \_\_\_\_\_

15. Subtotal (add 13 and 14) \$ \_\_\_\_\_

16. a. Credits toward judgment principal \$ \_\_\_\_\_

      b. Credits toward interest on judgment \$ \_\_\_\_\_

17. Subtotal (subtract 16 a and b from 15) \$ \_\_\_\_\_

18. Fee for issuance of writ \$ \_\_\_\_\_

19. **Total** (add 17 and 18) \$ \_\_\_\_\_

20. Levying officer:

      a. Add daily interest from date of writ (at the legal rate on subtotal of 13 minus 16a and minus any amounts in 20b)

Subtotal (13 minus 16a) \$ \_\_\_\_\_

      b. Pay directly to court costs included in 11 and 18 under GC 6103.5, 68637; CCP 699.520(i) \$ \_\_\_\_\_

21.  The amounts called for in items 11–20 are different for each debtor. These amounts are stated for each debtor on Attachment 21.

5. **Judgment entered** on (date):

6.  Judgment renewed on (dates):

7. **Notice of sale** under this writ

a.  has not been requested.

b.  has been requested (see next page).

8.  Joint debtor information on next page.

[SEAL]

Issued on (date): \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.**

Plaintiff: Defendant:	CASE NUMBER:
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—Items continued from page 1—

22.  Additional judgment debtor (*name, type of legal entity stated in judgment if not a natural person, and last known address*):

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23.  Notice of sale has been requested by (*name and address*):

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24.  Joint debtor was declared bound by the judgment (CCP 989–994)

<p>a. <i>on (date)</i>:</p> <p>b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border: 1px solid black; height: 20px;"></td> <td style="width: 50%; border: 1px solid black; height: 20px;"></td> </tr> </table>			<p>a. <i>on (date)</i>:</p> <p>b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border: 1px solid black; height: 20px;"></td> <td style="width: 50%; border: 1px solid black; height: 20px;"></td> </tr> </table>		

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c.  additional costs against certain joint debtors (*itemize*):

25.  (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a.  Possession of real property: The complaint was filed on (date): \_\_\_\_\_ and the action was  was  was not  for unlawful detainer (*if for unlawful detainer, check 1 or 2*).

(1)  The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2)  The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ \_\_\_\_\_ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (*specify*): \_\_\_\_\_

b.  Possession of personal property.

If delivery cannot be had, then for the value (*itemize in 25e*) specified in the judgment or supplemental order.

c.  Sale of personal property.

d.  Sale of real property.

e. Description of property:

**NOTICE TO PERSON SERVED**

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150). WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Forms: Declarations of Demurring Party Regarding Meet and Confer

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990

*susan.mcmullan@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda:

Forms to implement new meet-and-confer requirements on demurrers. Senate Bill 383 provides that parties must meet-and-confer prior to filing a demurrer. New forms would be helpful both to educate the parties on the requirements and to make it easier for courts to find that the requirement had been met.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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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):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>NOT APPROVED BY THE JUDICIAL COUNCIL</b></p>
<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)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligor

Revise forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688 and FL-692

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Ruth McCreight; 415-865-7666; [ruth.mccreight@jud.ca.gov](mailto:ruth.mccreight@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/10/15

Project description from annual agenda: Provide recommendations for forms required by recent legislative changes as a result of AB 610, which among other things, authorizes the suspension of a child support order by operation of law when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

AB 610 was urgency legislation that went into effect on October 8, 2015.

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## INVITATION TO COMMENT

### SPR16-\_\_

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**Title**

Child Support: Statutory Relief for  
Incarcerated/Involuntarily Institutionalized  
Obligors

**Action Requested**

Review and submit comments by June 14,  
2016

**Proposed Rules, Forms, Standards, or Statutes**

Revise forms FL-342, FL-350, FL-490,  
FL-530, FL-615, FL-625, FL-630, FL-665,  
FL-676, FL-676-INFO, FL-687, FL-688 and  
FL-692

**Proposed Effective Date**

January 1, 2017

**Contact**

Ruth McCreight, 415-865-7666

[ruth.mccreight@jud.ca.gov](mailto:ruth.mccreight@jud.ca.gov)

Eve Hershcopf, 415-865-7961

[eve.hershcopf@jud.ca.gov](mailto:eve.hershcopf@jud.ca.gov)

**Proposed by**

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends revising eight forms to remove a provision regarding forgiveness of child support arrears for incarcerated obligors, which became effective as former Family Code section 4007.5 on July 1, 2011, and sunsetted July 1, 2015. The committee also recommends revising the same eight forms and an additional five forms to incorporate provisions of recently enacted Family Code section 4007.5 regarding temporary suspension of child support obligations for incarcerated and involuntarily institutionalized obligors, which became effective as current Family Code section 4007.5 on October 8, 2015.

Recent legislation authorizes the suspension of a child support order to occur *by operation of law* when an obligor is incarcerated or involuntarily institutionalized, unless certain exceptions apply. It also authorizes the local child support agency to administratively adjust account balances for a suspended support order and, if either party objects to the administrative process, requires the agency to file a motion with the court to request to adjust the arrears. That adjustment will be allowed only upon approval by the court.

*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.*

## **Background**

Effective July 1, 2011, the Judicial Council revised nine forms to implement changes to the Family Code made by Senate Bill 1355 (Wright; Stats. 2010, ch. 495) that required: (1) every child support order and agreement made on or after July 1, 2011, which is enforced by a local child support agency to include a provision regarding the effect of incarceration or involuntary institutionalization on child support orders; and (2) a procedure to allow an obligor to petition the court for an adjustment of arrears after release from incarceration or involuntary institutionalization. An explanatory provision regarding Family Code section 4007.5 was added to forms FL-530 (item 6.b.(6)), FL-615 (item 3.e.(6)), FL-625 (item 3.d.(6)), FL-630 (item 6.b.(6)), FL-665 (item 5.c.(6)), FL-687 (item 4.b.(6)), and FL-692 (item 14.i).

The Judicial Council also revised the title of FL-676, *Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Governmental)*, and added items to allow a child support obligor to petition the court for an adjustment of arrears upon release from incarceration or involuntary institutionalization. An approved information sheet, form FL-676-INFO, *Information Sheet for Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization*, provided instructions on the use of form FL-676 to seek relief. Form FL-676 was subsequently revised effective January 1, 2012, to comply with the requirements of Assembly Bill 939 (Assem. Com. on Judiciary; Stats. 2010, ch. 352).

The provisions of SB 1355 (codified as Fam. Code, § 4007.5) sunsetted on July 1, 2015, and the option for incarcerated or involuntarily institutionalized obligors to request adjustment of child support arrears expired. In response, AB 610 (Jones-Sawyer; Stats. 2015, ch. 629), was approved as urgency legislation, effective October 8, 2015. AB 610 replaces former Family Code section 4007.5 with a new provision (current Fam. Code, § 4007.5), which authorizes the suspension of child support orders *by operation of law* when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days, unless (1) the obligor has the means to pay support, or (2) the obligor was incarcerated or involuntarily institutionalized for failure to pay child support or for an offense constituting domestic violence against the supported party or child. The legislation applies both to child support cases that are enforced by the local child support agency (title IV-D cases), and to those without local child support agency involvement.

Assembly Bill 610 authorizes the local child support agency to administratively adjust child support account balances, requires the agency to give notice of the adjustment, and provides the obligor and the obligee with the opportunity to object to the adjustment. If either party objects, the agency is required to file a motion asking the court to adjust the arrears; in those instances, the adjustment will be allowed only upon approval by the court. When the local child support agency is not involved in a case, the legislation permits the obligor or obligee to petition the court for a determination of the level of child support or of arrears amounts.

The legislation requires the child support obligation to resume on the first day of the month following the obligor's release from incarceration or involuntary institutionalization. The legislation also requires the Department of Child Support Services, in consultation with the Judicial Council, to develop forms to implement the administrative process. The proposal set forth below, however, solely addresses Judicial Council forms that are integral to the judicial process and provide notice to the obligor regarding the provisions of AB 610.

### **The Proposal**

To comply with the statutory sunset provision of SB 1355 and that of recently enacted AB 610, the Family and Juvenile Law Advisory Committee proposes to replace, on the eight forms listed below, the current provision regarding determination of support arrearages or adjustment of arrearages due to incarceration or involuntary institutionalization with the following provision, designed to incorporate the terms of AB 610 and drafted in "plain language":

When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay support is released from jail, prison, or the institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

The eight forms and specific items to be revised are:

- **Form FL-350**, *Stipulation to Establish or Modify Child Support and Order*, item 7.d.
- **Form FL-530**, *Judgment Regarding Parental Obligations (UIFSA)*, item 6.b.(6).
- **Form FL-615**, *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)*, item 3.e.(6).
- **Form FL-625**, *Stipulation and Order (Governmental)*, item 3.d.(6).
- **Form FL-630**, *Judgment Regarding Parental Obligations (Governmental)*, item 6.b.(6).
- **Form FL-665**, *Findings and Recommendation of Commissioner (Governmental)*, item 5.c.(6).
- **Form FL-687**, *Order After Hearing (Governmental)*, item 4.b.(6).

- **Form FL-692**, *Minutes and Order or Judgment (Governmental)*, item 14.i.

The committee proposes adding the same provision to two forms that do not currently include a provision regarding determination of support arrearages or adjustment of arrearages due to incarceration or involuntary institutionalization:

- **Form FL-342**, *Child Support Information and Order Attachment*, item 6.f.
- **Form FL-688**, *Short Form Order After Hearing*, item 3.h.

The committee also proposes revise form FL-676, *Request For Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Governmental)*, and the corresponding instruction form, FL-676 INFO, *Information Sheet For Request For Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization (Governmental)*, as described below:

#### **FL-676**

- Replace the term “arrearages” with the term “arrear” in the title of the form: *Request For Determination of Support Arrear or Adjustment of Child Support Arrear Due to Incarceration or Involuntary Institutionalization (Governmental)*.
- Item 3:
  - Replace the term “arrearages” with the term “arrear” in the title of the item.
  - Replace current subdivision (a) with the statement, “The local child support agency states that support arrears are owed as shown in the attached document.”
  - Replace the term “arrearages” with the term “arrear” in subdivision (b).
- Item 4:
  - Replace the term “arrearages” with the term “arrear” in the title of the item.
  - Replace current subdivision (a)(1) with the statement, “Date(s) incarceration or involuntary institutionalization started: \_\_\_\_\_.”
  - Add subdivision (c), “My child support order was issued or modified on or after October 8, 2015.”

#### **FL-676-INFO**

- Replace the term “arrearages” with the term “arrear” in every location where it appears on the form, including the title.
- Revise all references to form FL-676 to include the revised name of that form.
- In the second paragraph, replace the phrase “...that the local child support agency says that you owe...” with the phrase “...that the local child support agency says are owed...”
- In the instructions for “Front page, fourth box, left side,” item 3a, replace the phrase “...the amount of your support arrearages.” with the phrase, “...amount of support arrears owed.”

- In the instructions for “Front page, fourth box, left side,” item 3b, replace the phrase, “...statement of the amount of your support arrearages.” with the phrase, “...statement of the amount of support arrears owed.”

In addition, the committee proposes to revise form FL-490, *Application to Determine Arrearages*, as follows:

- Replace the term “arrearages” with the term “arrears” in the title of the form: *Application to Determine Arrears*.
- Revise Item 3:
  - Replace current subdivision (c) with the following: insert a check box with the title, “Jail, Prison, or an Institution (juvenile facility or mental health facility)” and the following provisions:
    - (1) I was incarcerated or involuntarily institutionalized for the following periods for more than 90 days during which I did not have the ability to pay support. (*Attach any proof of your incarceration or involuntary institutionalization.*)
      - a. Date(s) incarceration or involuntary institutionalization began:  
\_\_\_\_\_.
      - b. Date(s) incarceration or involuntary institutionalization ended:  
\_\_\_\_\_.
    - (2) The reason that I was in jail, prison, or an institution (juvenile facility or mental health facility) was NOT because I failed to pay child support or committed domestic violence against the supported person or child.
    - (3) My child support order was made or changed by the court on or after October 8, 2015.
  - Retitle current subdivision (c) as subdivision (d).
- Revise Item 5 as follows: I am asking the other person to pay a.  Attorney Fees  
b.  Costs.
- Add a reference to Family Code section 4007.5 to form footer.

### **Alternatives Considered**

In addition to the above form revisions, the Family and Juvenile Law Advisory Committee considered developing a new Judicial Council form for use by the local child support agency to ask the court to adjust the arrears when one of the parties objects to the proposed administrative action. The committee also considered revising form FL-680, *Notice of Motion (Governmental)*, to add an option for the local child support agency to inform the court that an objection was made to the request to adjust arrears. The committee concluded that either a new form or revisions to current form FL-680 would generate unnecessary costs for courts.

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

The committee is not aware of any implementation requirements, costs, or operational impacts affecting the local courts that will result from approval of the proposed forms other than standard

reproduction costs. The forms will be posted on the California Courts website. Courts will not incur costs beyond those that they may incur if they provide the forms to the public.

## **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?
- Are the proposed revisions an effective way to address the legislation that added new Family Code section 4007.5?
- Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form FL-680, *Notice of Motion (Governmental)* sufficient for this purpose?
- What is the impact of this modification on low and moderate income persons?

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. Revised forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692 at pages 7–42.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**CHILD SUPPORT INFORMATION AND ORDER ATTACHMENT**

- TO  Findings and Order After Hearing (form FL-340)  Judgment (form FL-180)  
 Restraining Order After Hearing (CLETS-OAH) (form DV-130)  
 Other (specify):

**THE COURT USED THE FOLLOWING INFORMATION IN DETERMINING THE AMOUNT OF CHILD SUPPORT:**

1.  A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.

2.  **Income**

	Gross monthly <u>income</u>	Net monthly <u>income</u>	Receiving <u>TANF/CalWORKS</u>
a. Each parent's monthly income is as follows:			
Petitioner/plaintiff: \$		\$	<input type="text"/>
Respondent/defendant: \$		\$	<input type="text"/>
Other parent: \$		\$	<input type="text"/>

b. Imputation of income. The court finds that the  petitioner/plaintiff  respondent/defendant  
 other parent has the capacity to earn:  
 \$ \_\_\_\_\_ per \_\_\_\_\_ and has based the support order upon this imputed income.

3.  **Children of this relationship**

- a. Number of children who are the subjects of the support order (specify): \_\_\_\_\_ %  
 b. Approximate percentage of time spent with petitioner/plaintiff: \_\_\_\_\_ %  
 respondent/defendant: \_\_\_\_\_ %  
 other parent: \_\_\_\_\_ %

4.  **Hardships**

Hardships for the following have been allowed in calculating child support:

	Petitioner/ <u>plaintiff</u>	Respondent/ <u>defendant</u>	Other parent	Approximate ending time <u>for the hardship</u>
a. <input type="checkbox"/> Other minor children:	\$	\$	\$	
b. <input type="checkbox"/> Extraordinary medical expenses:	\$	\$	\$	
c. <input type="checkbox"/> Catastrophic losses:	\$	\$	\$	

**THE COURT ORDERS**

5.  **Low-income adjustment**

- a.  The low-income adjustment applies.  
 b.  The low-income adjustment does not apply because (specify reasons):

6.  **Child support**

a. **Base child support**

Petitioner/plaintiff  Respondent/defendant  Other parent must pay child support beginning (date): \_\_\_\_\_ and continuing until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student, whichever occurs first, as follows:

<u>Child's name</u>	<u>Date of birth</u>	<u>Monthly amount</u>	<u>Payable to (name):</u>
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Payable  on the 1st of the month  one-half on the 1st and one-half on the 15th of the month  
 other (specify):

**THIS IS A COURT ORDER.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**THE COURT FURTHER ORDERS**

6. b.  **Mandatory additional child support**

- (1) Child-care costs related to employment or reasonably necessary job training
  - (a)  Petitioner/plaintiff must pay:           % of total or  \$           per month child-care costs.
  - (b)  Respondent/defendant must pay:       % of total or  \$           per month child-care costs.
  - (c)  Other parent must pay:               % of total or  \$           per month child-care costs.
  - (d)  Costs to be paid as follows (*specify*):

c. **Mandatory additional child support**

- (2) Reasonable uninsured health-care costs for the children
  - (a)  Petitioner/plaintiff must pay:           % of total or  \$           per month.
  - (b)  Respondent/defendant must pay:       % of total or  \$           per month.
  - (c)  Other parent must pay:               % of total or  \$           per month.
  - (d)  Costs to be paid as follows (*specify*):

d.  **Additional child support**

- (1)  Costs related to the educational or other special needs of the children
  - (a)  Petitioner/plaintiff must pay:           % of total or  \$           per month.
  - (b)  Respondent/defendant must pay:       % of total or  \$           per month.
  - (c)  Other parent must pay:               % of total or  \$           per month.
  - (d)  Costs to be paid as follows (*specify*):
- (2)  Travel expenses for visitation
  - (a)  Petitioner/plaintiff must pay:           % of total or  \$           per month.
  - (b)  Respondent/defendant must pay:       % of total or  \$           per month.
  - (c)  Other parent must pay:               % of total or  \$           per month.
  - (d)  Costs to be paid as follows (*specify*):

e.  **Non-Guideline Order**

This order does not meet the child support guideline set forth in Family Code section 4055. *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) is attached.

**Total child support per month: \$**

f. **Child Support Order Suspension (Family Code § 4007.5)**

When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or the institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

7. **Health-care expenses**

- a. Health insurance coverage for the minor children of the parties must be maintained by the  petitioner/plaintiff  respondent/defendant  other parent if available at no or reasonable cost through their respective places of employment or self-employment. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any health-care claims. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

**THIS IS A COURT ORDER.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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- b.  Health insurance is not available to the  petitioner/plaintiff  respondent/defendant  other parent at a reasonable cost at this time.
- c.  The party providing coverage must assign the right of reimbursement to the other party.

**8. Earnings assignment**

An earnings assignment order is issued. **Note:** The payor of child support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor’s wages and for payment of any support not paid by the assignment.

- 9. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

**10.  Employment search order (Family Code § 4505)**

Petitioner/plaintiff  Respondent/defendant  Other parent is ordered to seek employment with the following terms and conditions:

**11. Other orders (specify):**

**12. Notices**

- a. *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.
- b. If this form is attached to *Restraining Order After Hearing* (form DV-130), the support orders issued on this form (form FL-342) remain in effect after the restraining orders issued on form DV-130 end.

**13. Child Support Case Registry Form**

Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this order. Thereafter, the parties must notify the court of any change in the information submitted within 10 days of the change by filing an updated form.

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

**THIS IS A COURT ORDER.**

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  <h2 style="margin: 0;">DRAFT</h2>  <h3 style="margin: 0;">NOT APPROVED BY THE JUDICIAL COUNCIL</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER</b>	CASE NUMBER: _____

1. a.  Mother's net monthly disposable income: \$ \_\_\_\_\_  
        Father's net monthly disposable income: \$ \_\_\_\_\_  
       **-OR-**
- b.  A printout of a computer calculation of the parents' financial circumstances is attached.
2.  Percentage of time each parent has primary responsibility for the children: Mother: \_\_\_\_\_ %    Father: \_\_\_\_\_ %
3. a.  A hardship is being experienced by the mother \$ \_\_\_\_\_ per month because of (specify): \_\_\_\_\_  
       The hardship will last until (date): \_\_\_\_\_
- b.  A hardship is being experienced by the father \$ \_\_\_\_\_ per month because of (specify): \_\_\_\_\_  
       The hardship will last until (date): \_\_\_\_\_
4. The amount of child support payable by (name): \_\_\_\_\_, referred to as "the parent ordered to pay support," as calculated under the guideline is: \$ \_\_\_\_\_ per month.
5.  We agree to guideline support.
6.  The guideline amount should be rebutted because of the following:
  - a.  We agree to child support in the amount of \$ \_\_\_\_\_ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.
  - b.  Other rebutting factors (specify): \_\_\_\_\_
7. The parent ordered to pay support must pay child support as follows beginning (date): \_\_\_\_\_
  - a. BASIC CHILD SUPPORT
 

<u>Child's name</u>	<u>Monthly amount</u>	<u>Payable to (name):</u>

Total: \$ \_\_\_\_\_ payable  on the first of the month  other (specify): \_\_\_\_\_

- b.  In addition, the parent ordered to pay support must pay the following:
  - (1)  \$ \_\_\_\_\_ per month for child care costs to (name): \_\_\_\_\_ on (date): \_\_\_\_\_
  - (2)  \$ \_\_\_\_\_ per month for health-care costs not covered by insurance to (name): \_\_\_\_\_ on (date): \_\_\_\_\_
  - (3)  \$ \_\_\_\_\_ per month for special educational or other needs of the children to (name): \_\_\_\_\_ on (date): \_\_\_\_\_
  - (4)  other (specify): \_\_\_\_\_
- c. **Total monthly child support** payable by the parent ordered to pay support will be: \$ \_\_\_\_\_ payable  on the first of the month  other (specify): \_\_\_\_\_
- d. When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.



PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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**APPLICATION TO DETERMINE ARREARS**

Attachment to Request for Order (form FL-300)

- Child support     Spousal or partner support     Family support     Medical support
- Unreimbursed expenses     Unreimbursed medical expenses
- Other (specify):

1. I ask that the amount of back support that I owe (arrears) be decided in this case.

2. I have attached (check all that apply):

- a.  a Declaration of Payment History (FL-420)
- b.  a Payment History Attachment (FL-421)
- c.  Other (specify):

3.  I ask that the amount of back support (arrears) be changed as follows:

- a.  I have already paid  some  all of the support ordered. Proof of payment is attached.
- b.  The children for whom support is to be paid were living with me full time for the period from \_\_\_\_\_ to \_\_\_\_\_. I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
- c.  Jail, prison, or an Institution (juvenile facility or mental health facility.)
- (1) I was incarcerated or involuntarily institutionalized for the following periods for more than 90 days during which I did not have the ability to pay support. (Attach any proof of your incarceration or involuntary institutionalization.)
- (a) Date(s) incarceration or involuntary institutionalization began: \_\_\_\_\_
- (b) Date(s) incarceration or involuntary institutionalization ended: \_\_\_\_\_
- (2) The reason that I was in jail, prison, or an institution (juvenile facility or mental health facility) was NOT because I failed to pay child support or committed domestic violence against the supported person or child.
- (3) My child support order was made or changed by the court on or after October 8, 2015.
- d.  Other (specify):

4.  I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed  childcare expense  medical expense (Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)

5.  I am asking the other person to pay a.  Attorney Fees b.  Costs  
Income and Expense Declaration (form FL- 150) is attached.

6. Facts in support of the relief requested are (specify):

contained in the attached declaration.

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 DECLARANT)

Petitioner/Plaintiff     Respondent/Defendant

Attorney     Other (specify):

**NOTICE: This form must be attached to Request for Order (FL-300)**

**NOT A COURT ORDER**

**APPLICATION TO DETERMINE ARREARS**

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406):   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:	
PETITIONER: RESPONDENT: OTHER:	
<b>JUDGMENT REGARDING PARENTAL OBLIGATIONS (UIFSA)</b> <input type="checkbox"/> _____ <b>AMENDED</b> <input type="checkbox"/> _____ <b>SUPPLEMENTAL</b>	CASE NUMBER: _____

1. a.  **NOTICE: THIS IS A PROPOSED JUDGMENT.** This *Judgment Regarding Parental Obligations (UIFSA)* will be entered by the court and will become legally binding unless you fill out and file the *Response to Uniform Support Petition (UIFSA)* (form FL-520) with the court clerk within 30 days of the date you were served with the *Summons (UIFSA)* (form FL-510) and *Uniform Support Petition* (form OMB 0970-0085). If you need a *Response* form, you may get one from the local child support agency, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the *Response*, follow the procedures listed in the information sheet attached to that form.
- b.  **NOTICE: THIS IS A JUDGMENT.** It is now legally binding.
2. **THIS MATTER PROCEEDED AS FOLLOWS:**
  - a.  Judgment entered under Family Code section 5002.
  - b.  By court hearing, appearances as follows:
 

(1) Date:	Dept.:	Judicial officer:
(2) <input type="checkbox"/> Petitioner present	<input type="checkbox"/>	<input type="checkbox"/> Attorney present (name):
(3) <input type="checkbox"/> Respondent present	<input type="checkbox"/>	<input type="checkbox"/> Attorney present (name):
(4) Child support agency (Family Code, §§ 17400, 17406) by (name):		
(5) <input type="checkbox"/> Other (specify):		
  - c. The parent ordered to pay support is the  petitioner  respondent  other (specify):
3.  This order is based on presumed income for the parent ordered to pay support under Family Code section 5002.
4.  Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
5.  This order is based on the attached documents (specify):
6. **THE COURT ORDERS:**
  - a. The parent ordered to pay support  is the parent of the children named in item 6b.  
 has previously been determined to be the parent of the children named in item 6b.
  - b. The parent ordered to pay support must pay current child support as follows:
 

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly support amount</u>
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**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

PETITIONER: RESPONDENT: OTHER:	CASE NUMBER:
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6. b. (1)  Mandatory additional child support
- (a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  child-care provider.
- (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  health-care provider.

(2)  Other (specify): \_\_\_\_\_

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date): \_\_\_\_\_

- (4)  The low-income adjustment applies.  
 The low-income adjustment does not apply because (specify reasons): \_\_\_\_\_

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

c.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d.  The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount
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PETITIONER: RESPONDENT: OTHER:	CASE NUMBER:
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(1)  Other (*specify*):

(2)  For a total of \$ \_\_\_\_\_ payable \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (*date*):

(3)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

6. e. No provision of this judgment operates to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below (*specify address*):

**g. An earnings assignment order is issued.**

h. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

i. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k. The *Notice of Rights and Responsibilities and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

l.  The court further orders (*specify*):

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

Number of pages attached: \_\_\_\_\_

\_\_\_\_\_  
 JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order. Date: _____   _____ (SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)
--

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>  <h2 style="margin: 0;">DRAFT</h2>  <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:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>STIPULATION FOR <input type="checkbox"/> JUDGMENT <input type="checkbox"/> SUPPLEMENTAL JUDGMENT REGARDING PARENTAL OBLIGATIONS AND JUDGMENT</b>	CASE NUMBER: _____

**1. This matter proceeded as follows:**

- a.  By written stipulation without court appearance.
- b.  By court hearing, appearances as follows:
  - (1) Date: \_\_\_\_\_ Dept.: \_\_\_\_\_ Judicial officer: \_\_\_\_\_
  - (2)  Petitioner/plaintiff present  Attorney present (name): \_\_\_\_\_
  - (3)  Respondent/defendant present  Attorney present (name): \_\_\_\_\_
  - (4)  Other parent present  Attorney present (name): \_\_\_\_\_
  - (5) Local child support agency (Family Code, §§ 17400, 17406) by (name): \_\_\_\_\_
  - (6)  Other (specify): \_\_\_\_\_

c. The parent ordered to pay support is the  petitioner/plaintiff  respondent/defendant  other parent.

2.  This order is based on the attached documents (specify): \_\_\_\_\_

**3. The parties agree that:**

- a. The parent ordered to pay support has read and understands the *Advisement and Waiver of Rights for Stipulation* on page 5 of this form. The parent ordered to pay support gives up these rights and freely agrees that a judgment may be entered in accordance with this stipulation.
- b. The amount of support payable by the party ordered to pay support as calculated under the guideline is \$ \_\_\_\_\_ per month.
  - We agree to guideline support.
  - The guideline amount should be rebutted because of the following:
    - (1)  We have been fully informed of the guideline amount of support; we agree voluntarily to child support in the amount of \$ \_\_\_\_\_ per month; the agreement is in the best interest of the children; the needs of the children will be met adequately by the agreed amount; the children are not receiving public assistance; no application for public assistance is pending; and application of the guideline would be unjust and inappropriate in this case. We understand that if the order is below the guideline, no change of circumstances need be shown for the court to raise this order to the guideline amount. If the order is above the guideline, a change of circumstances will be required to modify this order.
    - (2)  Other rebutting factors (specify): \_\_\_\_\_
- c.  The computer printout attached shows the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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3. d.  Petitioner/plaintiff  Respondent/defendant  Other parent are the parents of the children named in item 3e below.

e. The parent ordered to pay support must pay current child support as follows:

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly support amount</u>
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(1)  Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:

one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.

Payments must be made to the  other parent  State Disbursement Unit  child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:

one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.

Payments must be made to the  other parent  State Disbursement Unit  health-care provider.

(2)  Other (specify):

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date):

(4)  The low-income adjustment applies.

The low-income adjustment does not apply because (specify reasons):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

f.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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3. g.  The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below.

<u>Name of child</u>	<u>Date of birth</u>	<u>Period of support</u>	<u>Amount</u>
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(1)  Other (*specify*):

(2)  For a total of \$ \_\_\_\_\_ payable \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (*date*):

(3)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

- h. If this is a judgment on a *Supplemental Complaint*, it does not modify or supersede any prior judgment or order for support or arrearages, unless specifically provided.
- i. No provision of this judgment may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.
- j. All payments, unless specified in item 3e(1) above, must be made to the State Disbursement Unit at the address listed below (*specify address*):

**k. An earnings assignment order is issued.**

- l. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
- m. If "The parent ordered to pay support" box is checked in item 3f, a health insurance coverage assignment must issue.
- n. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- o. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.
- p.  The following person (the "other parent") is added as a party to this action (*name*):

q.  Other (*specify*):

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF PETITIONER)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR PETITIONER)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF RESPONDENT)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR RESPONDENT)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF OTHER PARENT)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR OTHER PARENT)

**JUDGMENT**

**4. THE COURT SO ORDERS.**

Date: \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL OFFICER

Number of pages attached: \_\_\_\_\_  SIGNATURE FOLLOWS LAST ATTACHMENT

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**ADVISEMENT AND WAIVER OF RIGHTS FOR STIPULATION**

- |  |  |  |
|--|--|--|
| <p><b>1. RIGHT TO BE REPRESENTED BY A LAWYER.</b> I understand that I have the right to be represented by a lawyer of my choice at my expense. If I cannot afford a lawyer to represent me, I can ask the court to appoint one to represent me free of charge only if I dispute that I am the parent of the children named in this action and only on the issue of parentage. I understand that the attorney for the local child support agency does not represent me.</p> <p><b>2. RIGHT TO A TRIAL.</b> I understand that I have a right to have a judicial officer (1) determine if I am the parent of the children named in the stipulation, (2) decide how much child support I must pay, and (3) decide how much I owe for arrearages (unpaid support).</p> <p><b>3. RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES.</b> I understand that in a trial any allegations made against me must be proved. At the trial I may be present with a lawyer when witnesses testify, and I may ask them questions. I may also present evidence and witnesses.</p> <p><b>4. RIGHT TO HAVE PARENTAGE TESTS WHERE THE LAW PERMITS.</b> I understand that, where the law permits, I have the right to have the court order parentage tests. The court will decide on the tests. The court could order that I pay none, some, or all of the costs of the tests.</p> | <p><b>5. ADMISSION AND WAIVER OF RIGHTS.</b> I understand that by agreeing to the terms of this stipulation, I am admitting that I am the parent of the children named in the stipulation and I am giving up the rights stated above.</p> <p><b>6. WHERE THE STIPULATION INCLUDES CHILD SUPPORT.</b></p> <p>a. I understand that I will have the duty to obey the support order for the children named in the stipulation until the order is changed by the court or ended by law.</p> <p>b. I also understand that the court will order any support payments to be paid directly from my wages or other earnings and sent to the local child support agency if one is assigned to collect the support.</p> <p>c. I have been advised of the amount of guideline child support and how the proposed child support amount was determined.</p> <p><b>7. WHERE THE STIPULATION INCLUDES A PROVISION FOR HEALTH INSURANCE.</b> I understand that I must keep health insurance coverage for the minor children if insurance is available or becomes available to me at no or reasonable cost. A health insurance coverage assignment/<i>National Medical Support Notice</i> may be ordered to get health insurance for my children.</p> | <p><b>8.</b> I agree to the terms of this stipulation freely and voluntarily.</p> <p><b>9.</b> I understand that the local child support agency is required by state law to enforce the duty of support.</p> <p><b>10. I UNDERSTAND THAT IF I WILLFULLY FAIL TO SUPPORT MY CHILDREN, CRIMINAL PROCEEDINGS MAY BE INITIATED AGAINST ME.</b></p> <p><b>11. COLLECTION OF SUPPORT.</b> I understand that any support I owe may be collected from any of my property. This collection may be made by intercepting money owed to me by the state or federal government (such as tax refunds, unemployment and disability benefits, and lottery winnings), by taking property I own, by placing a lien on my property, or by any other lawful means.</p> <p><b>12. IF I AM REPRESENTED BY AN ATTORNEY, MY ATTORNEY HAS READ AND EXPLAINED TO ME THE TERMS OF THE STIPULATION AND THIS ADVISEMENT AND WAIVER OF RIGHTS, AND I UNDERSTAND THESE TERMS.</b></p> |
|--|--|--|

I have read and understand the *Advisement and Waiver of Rights for Stipulation*; or

Attached is a translation of this *Advisement and Waiver of Rights for Stipulation* in (specify language):

I understand the translation.

Date:

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (PARTY'S SIGNATURE)

\_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (PARTY'S SIGNATURE)

**DECLARATION OF PERSON PROVIDING INTERPRETATION/TRANSLATION:** The party/parties indicated below is/are unable to read or understand this *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* because

<input type="checkbox"/> (Insert name): _____'s primary language is (specify): _____ and he or she <input type="checkbox"/> has <input type="checkbox"/> has not read the form stipulation translated into this language.	<input type="checkbox"/> (Insert name): _____'s primary language is (specify): _____ and he or she <input type="checkbox"/> has <input type="checkbox"/> has not read the form stipulation translated into this language.
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I certify under penalty of perjury under the laws of the State of California that I am competent to interpret or translate in the primary language indicated above and that I have, to the best of my ability, read to, interpreted for, or translated for the above-named party the *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* in the party's primary language. The above-named party said he or she understood the terms of this *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* before signing it.

Date:

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (SIGNATURE)

\_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (SIGNATURE)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406):   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:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>STIPULATION AND ORDER</b>	CASE NUMBER:

**1. This matter proceeded as follows:**

- a.  By written stipulation without court appearance.
- b.  By court hearing, appearances as follows:
 

(1) Date: _____	Dept.: _____	Judicial officer: _____
(2) <input type="checkbox"/> Petitioner/plaintiff present	<input type="checkbox"/> Attorney present (name): _____	
(3) <input type="checkbox"/> Respondent/defendant present	<input type="checkbox"/> Attorney present (name): _____	
(4) <input type="checkbox"/> Other parent present	<input type="checkbox"/> Attorney present (name): _____	
(5) Local child support agency (Family Code, §§ 17400, 17406) by (name): _____		
(6) <input type="checkbox"/> Other (specify): _____		

c. The parent ordered to pay support is the  petitioner/plaintiff  respondent/defendant  other parent.

2.  This order is based on the attached documents (specify):

**3. The parties agree that**

- a. All orders previously made in this action remain in full force and effect except as specifically modified below.
- b. The amount of support payable by the parent ordered to pay support as calculated under the guideline is \$ \_\_\_\_\_ per month.

- We agree to guideline support.
- The guideline amount should be rebutted because of the following:

- (1)  We have been fully informed of the guideline amount of support; we agree voluntarily to child support of \$ \_\_\_\_\_ per month; the agreement is in the best interest of the children; the needs of the children will be met adequately by the agreed amount; the children are not receiving public assistance; no application for public assistance is pending; and application of the guideline would be unjust and inappropriate in this case. We understand that if the order is below the guideline, no change of circumstances need be shown for the court to raise this order to the guideline amount. If the order is above the guideline, a change of circumstances will be required to modify this order.
- (2)  Other rebutting factors (specify):

c.  The attached computer printout shows the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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3. d.  The parent ordered to pay support must pay current child support as follows:

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly support amount</u>
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- (1)  Mandatory additional child support
- (a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  child-care provider.
- (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  health-care provider.
- (2)  Other (*specify*):

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (*date*):

(4)  The low-income adjustment applies.  
 The low-income adjustment does not apply because (*specify reasons*):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

e.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

3. f.  The parent ordered to pay support owes support arrears as follows, as of *(date)*:
- (1)  Child support: \$  Spousal support: \$  Family support: \$
  - (2)  Interest is not included and is not waived.
  - (3)  Payable: \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning *(date)*:
  - (4)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.
- g. No provision of this judgment may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.
- h. All payments, unless specified in item 3d(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address)*:
- i. **An Income Withholding for Support (form FL-195/OMB No. 0970-0154) will issue.**
- j. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
- k. If "The parent ordered to pay support" box is checked in item 3e, a health insurance coverage assignment must issue.
- l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- m. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.
- n.  The following person (the "other parent") is added as a party to this action *(name)*:
- o.  Other *(specify)*:

Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF RESPONDENT)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF OTHER PARENT)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR OTHER PARENT)

**ORDER**

**4. THE COURT SO ORDERS.**

Date: \_\_\_\_\_  
 Number of pages attached: \_\_\_\_\_ JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT

**DECLARATION OF PERSON PROVIDING INTERPRETATION/TRANSLATION:** The party/parties indicated below is/are unable to read or understand this *Stipulation and Order* because

(Insert name) \_\_\_\_\_'s primary language is (*specify*):

and he or she  has  has not read the form stipulation translated into this language.

(Insert name) \_\_\_\_\_'s primary language is (*specify*):

and he or she  has  has not read the form stipulation translated into this language.

I certify under penalty of perjury under the laws of the State of California that I am competent to interpret or translate in the primary language indicated above and that I have, to the best of my ability, read to, interpreted for, or translated for the above-named party the *Stipulation and Order* in the party's primary language. The above-named party said he or she understood the terms of this *Stipulation and Order* before signing it.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (SIGNATURE)

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME)  
 \_\_\_\_\_  
 (SIGNATURE)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406):   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY   <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:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>JUDGMENT REGARDING PARENTAL OBLIGATIONS</b> <input type="checkbox"/> _____ <b>AMENDED</b> <input type="checkbox"/> _____ <b>SUPPLEMENTAL</b>	CASE NUMBER:

1. a.  **NOTICE: THIS IS A**  **PROPOSED**  **AMENDED PROPOSED JUDGMENT.** This *Judgment Regarding Parental Obligations* will be entered by the court and will become legally binding unless you fill out and file the *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610) with the court clerk within 30 days of the date you were served with the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600). If you need form FL-610, you may get one from the local child support agency's office, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the answer, follow the procedures listed in the attached instructions.

b.  **NOTICE: THIS IS A JUDGMENT.** It is now legally binding.

**2. This matter proceeded as follows:**

a.  Judgment entered under Family Code section 17430.

b.  By court hearing, appearances as follows:

- |   |   |                   |
|---|---|-------------------|
| (1) Date:   | Dept.:  | Judicial officer: |
| (2) <input type="checkbox"/> Petitioner/plaintiff present                     | <input type="checkbox"/> Attorney present (name): |                   |
| (3) <input type="checkbox"/> Respondent/defendant present                     | <input type="checkbox"/> Attorney present (name): |                   |
| (4) <input type="checkbox"/> Other parent present                             | <input type="checkbox"/> Attorney present (name): |                   |
| (5) Local child support agency attorney (Family Code, §§ 17400,17406) (name): |   |                   |
| (6) <input type="checkbox"/> Other (specify):                                 |   |                   |

c. The parent ordered to pay support is the  petitioner/plaintiff  respondent/defendant  other parent.

3.  This order is based on presumed income for the parent ordered to pay support under Family Code section 17400.

4.  Attached is a computer printout showing the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

5.  This order is based on the attached documents (specify):

**THE COURT ORDERS**

6. a.  Petitioner/plaintiff  Respondent/defendant  Other parent are the parents of the children named in item 6b below.

b. The parent ordered to pay support must pay current child support as follows:

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly support amount</u>
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**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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6. b. (1)  Mandatory additional child support
- (a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  child-care provider.
- (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:  
 one-half or  % or  (specify amount): \$ \_\_\_\_\_ per month of the costs.  
 Payments must be made to the  other parent  State Disbursement Unit  health-care provider.
- (2)  Other (specify): \_\_\_\_\_

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date): \_\_\_\_\_

- (4)  The low-income adjustment applies.  
 The low-income adjustment does not apply because (specify reasons): \_\_\_\_\_

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

c.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d.  The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount
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PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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6. d. (1)  Other (*specify*):

(2)  For a total of \$ \_\_\_\_\_ payable \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (*date*):

(3)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. If this is a judgment on a *Supplemental Complaint*, it does not modify or supersede any prior judgment or order for support or arrearage, unless specifically provided.

f. No provision of this judgment can operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

g. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below (*specify address*):

**h. An earnings assignment order is issued.**

i. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

j. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

k. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

l. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

m.  The following person (the "other parent") is added as a party to this action (*name*):

n.  **The court further orders** (*specify*):

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

Number of pages attached: \_\_\_\_\_

\_\_\_\_\_  
 JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order. Date: _____  _____ (SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)
--

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR <i>(name)</i> : _____	FOR COURT USE ONLY   <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:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>FINDINGS AND RECOMMENDATION OF COMMISSIONER</b>	CASE NUMBER: _____

1. Name *(specify)*: \_\_\_\_\_ objected to Commissioner *(name)*: \_\_\_\_\_  
 hearing this matter as a temporary judge.
2. **THIS MATTER PROCEEDED AS FOLLOWS**
  - a.  By court hearing, appearances as follows:
 

(1) Date: _____	Dept.: _____	Judicial officer: _____
(2) <input type="checkbox"/> Petitioner/plaintiff present	<input type="checkbox"/> Attorney present <i>(name)</i> : _____	
(3) <input type="checkbox"/> Respondent/defendant present	<input type="checkbox"/> Attorney present <i>(name)</i> : _____	
(4) <input type="checkbox"/> Other parent present	<input type="checkbox"/> Attorney present <i>(name)</i> : _____	
(5) Local child support agency attorney (Family Code, §§ 17400, 17406) by <i>(name)</i> : _____		
(6) <input type="checkbox"/> Other <i>(specify)</i> : _____		
  - b. The parent ordered to pay support is the  petitioner/plaintiff  respondent/defendant  other parent.
3.  Attached is a computer printout showing the parents' income and percentage of time each parent spends with the child(ren).  
 The printout, which shows the calculation of child support payable, will become the court's findings.
4.  This recommended order is based on the attached documents *(specify)*: \_\_\_\_\_
5. **THE COMMISSIONER RECOMMENDS THE FOLLOWING**
  - a. All orders previously made in this action remain in full force and effect except as modified below.
  - b. (Name of parent):  mother  father  
 (Name of parent):  mother  father  
 are the parents of the children listed below.
  - c. The parent ordered to pay support must pay current child support as follows:
 

Name of child	Date of birth	Monthly support amount
(1) <input type="checkbox"/> Mandatory additional child support		
(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows: <input type="checkbox"/> one-half or <input type="checkbox"/> _____ % or <input type="checkbox"/> <i>(specify amount)</i> : \$ _____ per month of the costs. Payments must be made to the <input type="checkbox"/> other parent <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> child-care provider.		
(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows: <input type="checkbox"/> one-half or <input type="checkbox"/> _____ % or <input type="checkbox"/> <i>(specify amount)</i> : \$ _____ per month of the costs. Payments must be made to the <input type="checkbox"/> other parent <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> health-care provider.		

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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5. c. (2)  Other (specify):

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date):

(4)  The low-income adjustment applies.  
 The low-income adjustment does not apply because (specify reasons):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

d.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

e.  The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount
---------------	---------------	-------------------	--------

(1)  Other (specify):

(2)  For a total of \$ \_\_\_\_\_ payable \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (date):

(3)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

f.  The parent ordered to pay support owes support arrears as follows, as of (date):

(1)  Child support: \$ \_\_\_\_\_  Spousal support: \$ \_\_\_\_\_  Family support: \$ \_\_\_\_\_

(2)  Interest is not included and is not waived.

(3)  Payable: \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (date):

(4)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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- 5. g. No provision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.
- h. All payments, unless specified in item 5c(1) above, must be made to the State Disbursement Unit at the address listed below (*specify address*):
- i. **An earnings assignment order is issued.**
- j. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
- k. If "The parent ordered to pay support" box is checked in item 5d, a health insurance coverage assignment must issue.
- l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- m. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.
- n.  The following person (the "other parent") is added as a party to this action (*name*):
- o.  The court further recommends (*specify*):

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

\_\_\_\_\_  
 COMMISSIONER  
 SIGNATURE FOLLOWS LAST ATTACHMENT

Number of pages attached: \_\_\_\_\_

**CLERK'S CERTIFICATE OF MAILING OR SERVICE**

I certify that I am not a party to this cause and that

- 1.  **Personal service.** A true copy of this *Findings and Recommendation of Commissioner* was handed to the  petitioner/plaintiff  respondent/defendant  other parent at the hearing of this matter before the commissioner.
- 2.  **Mail.** A true copy of this *Findings and Recommendation of Commissioner* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the request was mailed  
 at (*place*): \_\_\_\_\_ California,  
 on (*date*): \_\_\_\_\_

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy




PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.  
Date:

\_\_\_\_\_ \_\_\_\_\_

(TYPE OR PRINT NAME) (SIGNATURE)

**An adult other than you must complete the Proof of Service below.**

**PROOF OF SERVICE**

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. My residence or business address is *(specify)*:
  
3. I served a copy of the foregoing *Request for Determination of Support Arrears* or *Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676) and all attachments as follows *(check either a, b, or c for each party served)*:
  - a.  **Personal delivery.** I personally delivered a copy and all attachments as follows:
 

(1) <input type="checkbox"/> Name of party or attorney served:	(2) <input type="checkbox"/> Name of local child support agency served:
(a) Address where delivered:	(a) Address where delivered:
(b) Date delivered:	(b) Date delivered:
(c) Time delivered:	(c) Time delivered:
  
  - b.  **Mail.** I am a resident of or employed in the county where the mailing occurred. I deposited this request with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:
 

(1) <input type="checkbox"/> Name of party or attorney served:	(2) <input type="checkbox"/> Name of local child support agency served:
(a) Address:	(a) Address:
(b) Date mailed:	(b) Date mailed:
(c) Place of mailing <i>(city and state)</i> :	(c) Place of mailing <i>(city and state)</i> :
  
  - (3) I served this motion/request, which included an address verification declaration (*Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order* (form FL-334) may be used for this purpose).

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 PERSON WHO SERVED REQUEST)

## INFORMATION SHEET FOR REQUEST FOR DETERMINATION OF SUPPORT ARREARS OR ADJUSTMENT OF CHILD SUPPORT ARREARS DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION

Please follow these instructions to complete a *Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676). If you need free help completing form FL-676, you can contact the Family Law Facilitator's Office in your county. For more information on finding a family law facilitator, see the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp).

Form FL-676 should be used only if you disagree with the support arrears that the local child support agency says are owed or if an adjustment of child support arrears due to incarceration or institutionalization is needed and you cannot reach an agreement with the local child support agency. Child support includes the basic amount plus any additional amount for child care costs related to employment, or education, or training to get job skills and reasonable uninsured health care costs for the children. Form FL-676 cannot be used if you want to change your child support order.

When you have completed form FL-676, file the original and attachments with the court clerk. The court clerk's address is listed in the telephone directory under "County Government Offices" or online at [www.courts.ca.gov/courts/find.htm](http://www.courts.ca.gov/courts/find.htm). **Keep three copies of the filed form and its attachments. Serve one copy on the local child support agency, one copy on the other parent, and keep the other for your records. (See *Information Sheet for Service of Process* (form FL-611).)**

### INSTRUCTIONS FOR COMPLETING FORM FL-676 (TYPE OR PRINT IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box if it is not already there.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the Other Parent leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also listed on your most recent support order or judgment.

Front page, fourth box, left side: Check the box to indicate whether you are asking for a determination of support arrears or adjustment of child support arrears due to incarceration or involuntary institutionalization. Check both boxes if you are asking for both a determination of arrears and an adjustment of child support arrears.

- 1.a.-b You must contact the court clerk's office and ask that a hearing date be set for this motion. The court clerk will give you the information you need to complete this section.
2. This section states that the local child support agency is handling your support case.
- 3a. **This section requires you to attach the statement or other document from the local child support agency that tells the amount of support arrears owed.**
- 3b. **This section requires you to attach your own statement of the amount of support arrears owed.** Your statement must show a monthly breakdown of the amount of support ordered and the amount paid each month. You may use *Declaration of Payment History* (form FL-420) and *Payment History Attachment* (form FL-421) to complete your statement of arrears.
4. **Complete all that apply.** If you check the box in item 4a, attach or bring to the court hearing proof of the dates of incarceration or involuntary institutionalization. If you have any evidence or documentation that you had no income or assets, in addition to your sworn statement on the form, please bring that to court with you.

You must date the request, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as the one on the front page. Instructions for how to complete the Proof of Service section of the *Request* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out this section of the form. **You cannot serve your own form FL-676.**



PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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4. b. (2)  Other (specify):

(3)  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date):

(4)  The low-income adjustment applies.

The low-income adjustment does not apply because (specify reasons):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

c.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d.  The parent ordered to pay support owes support arrears as follows, as of (date):

(1)  Child support: \$ \_\_\_\_\_  Spousal support: \$ \_\_\_\_\_  Family support: \$ \_\_\_\_\_

(2)  Interest is not included and is not waived.

(3)  Payable: \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (date):

(4)  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. No provision of this order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 4b(1) above, must be made to the State Disbursement Unit at the address listed below (specify address):

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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4. g. **An earnings assignment order is issued.**

- h. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
- i. If "The parent ordered to pay support" box is checked in item 4c, a health insurance coverage assignment must issue.
- j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- k. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.
- l.  The following person (the "other parent") is added as a party to this action (*name*):
- m.  The court further orders (*specify*):

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

Number of pages attached: \_\_\_\_\_

SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order. Date:  _____ (SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)
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PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

- i. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- j.  The parent ordered to pay support is ordered to obtain health insurance coverage for the children in this action if it becomes available at no or reasonable cost. The party ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.
- k.  Other (*specify*):

4. Number of pages attached: \_\_\_\_\_

Approved as conforming to court order.

Date:

Date:

 \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

\_\_\_\_\_  
 JUDICIAL OFFICER

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
<input type="checkbox"/> MINUTES <input type="checkbox"/> ORDER <input type="checkbox"/> JUDGMENT <input type="checkbox"/> RECOMMENDED ORDER	

This form may be used for preparation of court minutes and/or as an alternative to form FL-615, FL-625, FL-630, FL-665, or FL-687. If this form is prepared as both court minutes and an alternative to one of these forms, then the parties do not need to prepare any additional form of order.

1. **This matter proceeded as follows:**     Uncontested     By stipulation     Contested
  - a. Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_
  - b. Judicial officer (*name*): \_\_\_\_\_  Judge pro Tempore     Commissioner  
 Court reporter (*name*): \_\_\_\_\_  
 Court clerk (*name*): \_\_\_\_\_ Bailiff (*name*): \_\_\_\_\_
  - c.  Interpreter(s) present (*name*): \_\_\_\_\_  
 for (*name*): \_\_\_\_\_ (specify language): \_\_\_\_\_
  - d.  Petitioner present     Attorney present (*name*): \_\_\_\_\_
  - e.  Respondent present     Attorney present (*name*): \_\_\_\_\_
  - f.  Other parent present     Attorney present (*name*): \_\_\_\_\_
  - g. Attorney for local child support agency (*name*): \_\_\_\_\_
  - h. The parent ordered to pay support for purposes of this order is the  petitioner     respondent     other parent.
  - i.  Other (*specify*): \_\_\_\_\_
  
2.  This is a recommended order/judgment based on the objection of (*specify name*): \_\_\_\_\_
3. a.  This matter is taken off calendar.  
 b.  This entire matter is denied  with  without prejudice.  
 c.  This matter is continued at the request of the  local child support agency     petitioner     respondent  
 other parent to \_\_\_\_\_  
 Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_  
 (*specify issues*): \_\_\_\_\_  
 Petitioner  Respondent  Other parent is ordered to appear at that date and time.
- d.  The court takes the following matters under submission (*specify*): \_\_\_\_\_
  
4.  **Order of examination**  
 The  petitioner     respondent     other (*specify*): \_\_\_\_\_ was sworn and examined.  
 Examination was held outside of court.
5. **Referrals**
  - a.  The parties are referred to family court services or mediation.
  - b.  Petitioner     Respondent     Other parent is referred to the family law facilitator.
  - c.  Other (*specify*): \_\_\_\_\_

**THE COURT FINDS**

6.  Respondent     Petitioner     Other parent     was     was not served regarding this matter.
7.  Respondent     Petitioner     Other parent     admits     denies parentage.
8.  The parents of the children named below in item 14a are (*specify names*): \_\_\_\_\_

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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9.  Respondent  Petitioner  Other parent has read, understands, and has signed the *Advisement and Waiver of Rights for Stipulation (Governmental)* (form FL-694). He or she gives up those rights and freely agrees that a judgment may be entered in accordance with these findings.

10. a. Guideline support amount: \$
- b. This order  is  is not based on the guideline.
- c.  The attached *Guideline Findings Attachment (Governmental)* (form FL-693) is incorporated into these findings.
- d.  A printout, which shows the calculation of child support payable, is attached and must become the court's findings.
- e.  The child support agreed to by the parents is  below  above the statewide child support guideline. The amount of support that would have been ordered under the guideline formula is \$ \_\_\_\_\_ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance, and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. The order is in the best interest of the children. If the order is below the guideline, no change of circumstance will be required for the court to modify this order. If the order is above the guideline, a change of circumstance will be required for the court to modify this order.
- f.  The low-income adjustment applies.  
 The low-income adjustment does not apply because (*specify reasons*):

11.  Arrearages from (*specify date*): \_\_\_\_\_ through (*specify date*): \_\_\_\_\_  
 are \$ \_\_\_\_\_  including interest  interest not computed and not waived.

**THE COURT ORDERS**

12. All orders previously made in this action must remain in full force and effect except as specifically modified below.
13.  Genetic testing must be coordinated by the local child support agency.
- a.  Respondent  Petitioner  Mother of the children  
 Other (*specify*): \_\_\_\_\_  
 and the minor children must each submit to genetic testing as directed by the local child support agency.
- b.  The parent ordered to pay support must reimburse the local child support agency for genetic testing costs of \$ \_\_\_\_\_
14. a.  The parent ordered to pay support is the parent of the children listed below and must pay current child support for them.  
 The court finds that there is sufficient evidence that the parent ordered to pay support is the parent of the children listed below and therefore there is sufficient evidence to enter a support order.
- | <u>Name of child</u> | <u>Date of birth</u> | <u>Monthly basic support amount</u> |
|----------------------|----------------------|-------------------------------------|
|                      |                      |                                     |

- Additional children are listed on an attached page.
- b.  The parent ordered to pay support must pay additional support monthly for actual child-care costs of  
 (*specify amount*): \$ \_\_\_\_\_  one-half  (*specify percent*): \_\_\_\_\_ percent of said costs.  
 Payments must be made to the  State Disbursement Unit  other party  child-care provider.
- c.  The parent ordered to pay support must pay reasonable uninsured health-care costs for the children of  
 (*specify amount*): \$ \_\_\_\_\_  one-half  (*specify percent*): \_\_\_\_\_ percent of said costs.  
 Payments must be made to the  State Disbursement Unit  other party  health-care provider.
- d.  The parent ordered to pay support must pay additional support monthly for the following (*specify*):  
 (*specify amount*): \$ \_\_\_\_\_  one-half  (*specify percent*): \_\_\_\_\_ percent of said costs.  
 Payments must be made to the  State Disbursement Unit  other party.
- e.  Other (*specify*): \_\_\_\_\_

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.**

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14. f.  For a total of \$ \_\_\_\_\_ payable on the \_\_\_\_\_ day of each month beginning (date):

- g.  The low-income adjustment applies.  
 The low-income adjustment does not apply because (specify reasons):

h. Any support ordered will continue until further order of court, unless terminated by operation of law.

i. When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is automatically suspended (temporarily stopped). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child.

Once a person who has to pay child support is released from jail, prison, or an institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support to be suspended while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was issued (created), or was changed, on or after October 8, 2015.

15.  The parent ordered to pay support  The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

16.  The parent ordered to pay support may claim the children for tax purposes as long as all child support payments are current as of the last day of the year for which the exemptions are claimed.

17.  Petitioner  Respondent  Other parent must pay to  petitioner  respondent  other parent as  spousal support  family support \$ \_\_\_\_\_ per month, beginning (date):  payable on the \_\_\_\_\_ day of each month.

18.  The parent ordered to pay support must pay child support for the following past periods and in the following amounts:

Name of child	Period of support	Amount
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a.  Other (specify):

b.  For a total of \$ \_\_\_\_\_ payable \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (date):

c.  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

19.  The parent ordered to pay support owes support arrears as follows, as of (date):

a.  Child support: \$ \_\_\_\_\_  Spousal support: \$ \_\_\_\_\_  Family support: \$ \_\_\_\_\_  Other: \$ \_\_\_\_\_

b.  Interest is not computed and is not waived.

c.  Payable: \$ \_\_\_\_\_ on the \_\_\_\_\_ day of each month beginning (date):

d.  Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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- 20. No provision of this judgment can operate to limit any right to collect all sums owing in this matter as otherwise provided by law.
- 21. All payments, unless specified in items 14b, c, and d above, must be made to the State Disbursement Unit at the address listed below (*specify address*):
- 22. **An earnings assignment order is issued.**
- 23. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
- 24. If "The parent ordered to pay support" box is checked in item 15, a health insurance coverage assignment must issue.
- 25.  Job search. (*Specify name(s)*): \_\_\_\_\_ must seek employment for at least (*specify number*): \_\_\_\_\_ jobs per week and report those job applications and results to the court and the local child support agency at the continuance date. These job applications are to be made in person, not by phone, fax, or e-mail.
- 26.  For purposes of the licensing issue only, the parent ordered to pay support is found to be in compliance with the support order in this action. The local child support agency must issue a release of license(s).
- 27.  Notwithstanding any noncompliance issues with the support order in this action, the court finds that the needs of the party ordered to pay support warrant a conditional release. The local child support agency must issue a release of license(s). Such release is effective only as long as the parent ordered to pay support complies with all payment terms of this order.
- 28.  A warrant of attachment/bench warrant issues for (*specify name*):
  - a.  Bail is set in the amount of \$ \_\_\_\_\_
  - b.  Service is stayed until (*date*): \_\_\_\_\_
- 29.  The court retains jurisdiction to make orders retroactive to (*date*): \_\_\_\_\_
- 30.  The court reserves jurisdiction over  all issues  the issues of (*specify*): \_\_\_\_\_
- 31. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- 32. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) are attached and incorporated.
- 33.  The following person (the "other parent") is added as a party to this action (*name*): \_\_\_\_\_
- 34.  The court further orders (*specify*): \_\_\_\_\_

Approved as conforming to court order. Date: _____  (SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)  (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)
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Date: \_\_\_\_\_

\_\_\_\_\_  
 JUDICIAL OFFICER

Number of pages attached: \_\_\_\_\_

Signature follows last attachment.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Child Support Forms; Uniform Interstate Family Support Act

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Jenie Chang, 415-865-4268, [jenie.chang@jud.ca.gov](mailto:jenie.chang@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Provide recommendations for rules and forms required by recent legislative changes set forth in SB 746, which, among others things, revises the Uniform Interstate Family Support Act (UIFSA) to comply with federal law and maintain state eligibility to receive federal funding for child support enforcement, under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

### SPR16\_\_

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Title	Action Requested
Family Law: Child Support Forms; Uniform Interstate Family Support Act	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-515, FL-520, FL-560, FL-570, FL-575; revoke form FL-511	Proposed Effective Date January 1, 2017
Proposed by Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Contact Jenie Chang, 415-865-4268 <a href="mailto:jenie.chang@jud.ca.gov">jenie.chang@jud.ca.gov</a>

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising six Judicial Council forms and amending one of the California Rules of Court to accurately reflect updated code references, revoking one form in its entirety, and adopting three new Judicial Council forms. These changes are required by modifications to the Uniform Interstate Family Support Act (Sen. Bill 646 [Jackson]), which was chaptered in October 2015 as Family Code sections 5700.101–5700.905. (Stats. 215, ch. 493, § 5.)

### Background

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders. UIFSA represents a collaborative effort among the Uniform Law Commission (“ULC”), federal and state child support officials, and representatives of national child support organizations.

In 2008, the ULC approved amendments to UIFSA to incorporate the provisions of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded at The Hague on November 23, 2007 (“the Convention”). The Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases.

*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.*

In 2014, section 666(f) of Title 42 of the United States Code required all states to adopt and have in effect the Uniform Interstate Family Support Act, including any amendments officially adopted by the National Council of Commissioners on Uniform State Laws as of September 30, 2008. California adopted these changes in 2015 as Family Code sections 5700.101–5700.905. The proposed rule and forms changes are required to conform to these statutory changes.

### **The Proposal**

Code references on six forms and one rule would be revised to reflect the new sections of the Family Code per the UIFSA conversion chart. The committee recommends the following specific changes:

- Revise form FL-510 to replace the reference to Family Code section 4925 with section 5700.311
- Revise form FL-515 to replace the reference to Family Code section 4925 with section 5700.311
- Revise form FL-520 to replace the reference to Family Code section 4925 with section 5700.311
- Amend rule 5.324 to replace the reference to Family Code section 4930 with section 5700.316
- Revise form FL-570 to replace the reference to Family Code section 4952 with section 5700.603
- Revise form FL-570 to replace the reference to Family Code section 4954 with section 5700.605
- Revise form FL-575 to replace the reference to Family Code section 4955 with section 5700.606
- Revise form FL-575 to replace the reference to Family Code section 4956 with section 5700.607
- Revise form FL-560 to replace the reference to Family Code section 5001 with section 17404.2

Additionally, the proposal would:

- Revoke Judicial Council form FL-511, *Ex Parte Application for Order for Nondisclosure of Address and Order (UIFSA)* which was needed under former Family Code sections 4926 and 4977. Section 4926 has been recodified as section 5700.312 and now provides for a nonjudicial, nondisclosure process, thus removing the need for form FL-511.
- Adopt *UIFSA Child Support Order Jurisdictional Attachment* (form FL-590) to make assumption or loss of continuing exclusive jurisdiction a standard order in California. This will simplify the process and improve clarity when these forms are sent out of state. UIFSA is built on the principle of continuing, exclusive jurisdiction, where the state issuing the order retains jurisdiction to modify a child support order unless and until a certain set of conditions applies. The proposed form lays out each of those conditions to

allow courts to identify when jurisdiction is shifting or being retained. This will improve usability for private litigants seeking to modify their orders and also make California orders more easily read by other states. UIFSA requires a state assuming jurisdiction to provide notice and a copy of the resulting order to the original issuing state.

- Adopt *Request for Hearing Regarding Registration of a Convention Support Order* (form FL-592) which lists the appropriate defenses for the convention support order, thereby minimizing confusion on the part of the obligors.
- Adopt *Notice of Registration of a Convention Support Order-Family* (form FL-594) as it clearly delineates the timeframes within which one may contest the validity or enforcement of a registered order, and provides the necessary next steps towards contesting the convention support order.

The process set out for registration of a convention support order under Family Code sections 5700.706–5700.708 is distinct from the process to register an out-of-state or non-Convention foreign support order under Family Code sections 5700.605-5700.608. The defenses to registration and timeframe to file a contest are expanded for those cases under the convention. The committee recommends utilization of separate forms for this registration and contest process, to reduce confusion for parties regarding the available defenses and timeframes for each kind of order. The United States is not yet party to the 2007 Hague Convention, so Article VII (Fam. Code, §§ 5700.701–713) is not available for use until that time. Standalone forms would lead to less confusion regarding that delay.

### **Alternatives Considered**

Not making these changes is not a feasible alternative. Failure to make the modifications to the forms would result in California being out of compliance with the federal mandates and suffering adverse fiscal impacts. Moreover, without the updated code references, litigants using the forms could be confused by the obsolete citations. Failure to adopt the new forms would result in litigants not providing all the information they are required to report to the court.

The committee also reviewed new Family Code section 17404.3, which replaced Family Code section 5003 regarding telephonic and other remote appearances. That statute was amended to reflect the change in statute numbering under UIFSA by referring to section 5700.316 rather than the previous reference to section 4930. While it could be read to require courts to permit hearings by telephone, audiovisual means or other electronic means,<sup>1</sup> it has not been substantially changed from section 5003. Rather, the language of Family Code section 4930(f) was simply moved into new Family Code section 5700.316.

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<sup>1</sup> Hearings by telephone, audiovisual means, or other electronic means shall be permitted in child support cases in which the local child support agency is providing child support services. The Judicial Council shall adopt court rules implementing this provision and subdivision (f) of Section 5700.316 on or before January 1, 2017

The committee reviewed the language in rule 5.324 of the California Rules of Court and concluded that the rules previously adopted by the Judicial Council regarding telephonic appearances are sufficient if amended to reflect the new code section reference. While rule 5.324 does not allow telephonic or other remote appearances in all cases, it provides substantial due process protections and presumably met the previous code requirements. Thus, the committee recommends that only the required technical changes be made to the rule regarding telephonic and other remote appearances at this time. The committee will consider substantive changes to the rule as part of a future proposal that would address remote appearances in all family law matters.

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

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of implementing the forms, nor does the committee anticipate any requirements for implementation—or fiscal or operational impacts on the courts. Courts do not commonly make multiple copies of these forms. Providing the guidance set forth in the forms regarding the interstate requirements is intended to save time.

## Request for Specific Comments

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

- Are there specific changes that would improve the forms in this proposal? (If so, please specify the individual form and the particular recommended changes.)
- Does the proposal appropriately address the stated purpose?
- What is the impact of this proposal on low- and moderate-income persons?

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. Cal. Rules of Court, rule 5.324, at page 6
2. Forms FL-510, FL-511, FL-515, FL-520, FL-560, FL-570, FL-575, FL-590, FL-592, and FL-594 at pages 7–26
3. Senate Bill 646:  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB646](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB646)
4. UIFSA Conversion Chart at pages 27–30
5. Convention Support Order Contest section 707 and Recognition and Enforcement of Registered Convention Support Order section 708, at pages 31–33

1 **Title 5. Family and Juvenile Rules**

2  
3 **Division 1. Family Rules**

4  
5 **Chapter 10. Government Child Support Cases (Title IV-D Support Cases)**

6  
7  
8 **Rule 5.324. Telephone appearance in title IV-D hearings and conferences**

9  
10 **(a)–(c) \* \* \***

11  
12 **(d) Exceptions**

13  
14 A telephone appearance is not permitted for any of the following except as  
15 permitted by Family Code section 5700.3164930:

- 16  
17 (1) Contested trials, contempt hearings, orders of examination, and any matters  
18 in which the party or witness has been subpoenaed to appear in person; and  
19  
20 (2) Any hearing or conference for which the court, in its discretion on a case-by-  
21 case basis, decides that a personal appearance would materially assist in a  
22 determination of the proceeding or in resolution of the case.

23  
24 **(e)–(k) \* \* \***

# SUMMONS

**NOTICE AND WARNING TO RESPONDENT (AVISO Y ADVERTENCIA AL ACUSADO O A LA ACUSADA):**

**YOU ARE BEING SUED. THE LAWSUIT CLAIMS YOU ARE THE PARENT OF CHILDREN NAMED IN THE *UNIFORM SUPPORT PETITION*. THE LAWSUIT ALSO SAYS YOU MUST PAY CHILD SUPPORT.**

**SE HA PRESENTADO UNA DEMANDA JUDICIAL EN SU CONTRA. EN LA DEMANDA SE ALEGA QUE USTED ES EL PADRE/LA MADRE DEL (DE LOS) HIJO(S) NOMBRADO(S) EN LA PETICIÓN UNIFORME DE SUSTENTO (UNIFORM SUPPORT PETITION). LA DEMANDA INDICA TAMBIÉN QUE USTED DEBE PAGAR POR EL SUSTENTO DE DICHO(S) HIJO(S).**

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)

**DRAFT**

**NOT APPROVED BY THE JUDICIAL COUNCIL**

**YOU CAN OPPOSE THE LAWSUIT. IF YOU DON'T, THE COURT MAY FIND THAT YOU ARE THE PARENT AND ORDER YOU TO PAY CHILD SUPPORT, WHICH MAY BE TAKEN FROM YOUR PAY OR YOUR PROPERTY.**

**USTED PUEDE OPONERSE A LA DEMANDA. SI NO LO HACE, LA CORTE PODRÁ DETERMINAR QUE USTED ES EL PADRE/LA MADRE Y ORDENARLE QUE HAGA PAGOS DE SUSTENTO, LOS CUALES PODRÁN DEDUCIRSE DE SU SUELDO O DE OTROS BIENES DE SU PROPIEDAD.**

**YOU CAN OPPOSE THE LAWSUIT BY DOING ALL OF THE FOLLOWING WITHIN 30 CALENDAR DAYS AFTER BEING SERVED WITH THIS SUMMONS AND UNIFORM SUPPORT PETITION:**

CASE NUMBER: (Número del Caso)

**USTED PUEDE OPONERSE A LA DEMANDA AL TOMAR TODOS LOS PASOS SIGUIENTES DENTRO DE LOS 30 DÍAS CALENDARIOS CONTADOS A PARTIR DE LA FECHA EN QUE SE LE ENTREGUE ESTA CITACIÓN JUDICIAL Y PETICIÓN UNIFORME DE SUSTENTO:**

1. If you did not receive the *Response to Uniform Support Petition* (form FL-520) with the summons, you can get one from the court's family law facilitator's office or from the California Courts website at [www.courts.ca.gov](http://www.courts.ca.gov). Fill out, sign, and date the form.  
Si no recibió , junto con la citación judicial, el formulario de respuesta (formulario FL-520), titulado en inglés *Response to Uniform Support Petition* (form FL-520), obtenga uno en la oficina del asistente de derecho familiar de la corte o en el sitio web de las Cortes de California en [www.sucorte.ca.gov](http://www.sucorte.ca.gov). Complete, firme y feche el formulario.
2. Have an adult other than yourself mail a copy of the response to the Petitioner, or Petitioner's attorney, and/or local child support agency at the following address(es):  
*Haga que otra persona adulta (que no sea usted), envíe por correo una copia de este formulario a la parte demandante, o al abogado de la parte demandante, y/o a la oficina de la agencia local de mantenimiento de hijos (local child support agency) en la dirección o direcciones siguiente(s):*
3. The person who mailed the form must complete the proof of service on the back of the response.  
*La persona que envía el formulario por correo debe completar el comprobante de notificación (proof of service) impreso al dorso del formulario de respuesta.*
4. File the response with the court at the following address:  
*Presente el formulario de respuesta ante la corte en la siguiente dirección:*

**IF YOU WANT LEGAL ADVICE, CONTACT A LAWYER IMMEDIATELY.  
SI DESEA CONSEJOS LEGALES, CONSULTE A UN ABOGADO DE INMEDIATO.**

[SEAL]	<p><b>NOTICE TO THE PERSON SERVED:</b> You are served</p> <p>1. <input type="checkbox"/> As an individual.</p> <p>2. <input type="checkbox"/> On behalf of a minor child or children.</p> <p>3. <input type="checkbox"/> Other (specify):</p> <p>Date (Fecha): _____</p> <p>Clerk, by _____, Deputy (Actuario) (Delegado)</p>
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GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) or ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address</i> ): (Party appearing without an attorney should enter in this space the same address listed in item 3, below.)	<b>FOR COURT USE ONLY</b>
TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR ( <i>Name</i> ): _____	<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:	
PETITIONER:  RESPONDENT:  OTHER:	
<b>EX PARTE APPLICATION FOR ORDER FOR NONDISCLOSURE OF ADDRESS AND ORDER</b>	CASE NUMBER: _____

1.  (*Name*): \_\_\_\_\_ applies for an order for nondisclosure of the address or other identifying information of (*name*): \_\_\_\_\_ in the pleadings and other documents to be filed in this action.
  
2.  The local child support agency acting on behalf of (*name*): \_\_\_\_\_ applies for an order for nondisclosure of the address or other identifying information of (*name*): \_\_\_\_\_ in the pleadings and other documents to be filed in the UIFSA action.
  
3. The following is the mailing address for service of process on (*name*): \_\_\_\_\_
  
4. Facts in support of this application (*state facts that demonstrate that the health, safety, freedom of movement, or physical or emotional well-being of the applicant or the applicant's child may be unreasonably put at risk by the disclosure of the applicant's address or other identifying information*):  
 contained in the attached declaration

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 DECLARANT)

PETITIONER:  RESPONDENT:  OTHER:	CASE NUMBER:
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THE COURT FINDS:

5.  The health, safety, or liberty of *(name)*: would be unreasonably put at risk by the disclosure of his or her address or other identifying information that may lead to his or her whereabouts.
6.  The application is not sufficient to grant the requested relief.

THE COURT ORDERS:

7.  The address or other identifying information that may lead to the whereabouts of *(name)*: shall not be disclosed in the pleadings or documents filed in this action.
8.  The application is denied.
9.  Other *(specify)*:

Date:

\_\_\_\_\_  
 JUDICIAL OFFICER

**NOTE: Use of this ex parte application and order will require that the UIFSA petition in this matter be initiated in the California court in which this application is submitted pursuant to Family Code sections 4907 and 4918.**

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) or ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):  <hr/> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>   <h2 style="margin: 0;">DRAFT</h2>  <h3 style="margin: 0;">NOT APPROVED BY THE JUDICIAL COUNCIL</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER:  RESPONDENT:  OTHER:	
<b>ORDER TO SHOW CAUSE (UIFSA) FOR</b> <input type="checkbox"/> <b>MODIFICATION</b> <input type="checkbox"/> <b>Child Support</b> <input type="checkbox"/> <b>Spousal Support</b> <input type="checkbox"/> <b>Parentage</b> <input type="checkbox"/> <b>Other (specify):</b>	CASE NUMBER:

1. TO (name):
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE ORDERS ASKED FOR IN THE ATTACHED DOCUMENTS SHOULD NOT BE GRANTED.

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Rm.:
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b. Address of court  same as noted above  other (specify):

3. IT IS FURTHER ORDERED that a blank  *Responsive Declaration* (FL-320)  *Response to Uniform Support Petition* (FL-520) and the following documents must be served with this order:
  - a.  *Uniform Support Petition and General Testimony* (FL-500)
  - b.  A blank *Income and Expense Declaration* (FL-150) or *Financial Statement (Simplified)* (FL-155)
  - c.  *Affidavit in Support of Establishing Paternity* (FL-525/OMB 0970-0085)
  - d.  Copy of existing support order from (specify):
  - e.  Other (specify):
4. a.  Time for  service  hearing is shortened. Service must be on or before (date):  
Any responsive declaration must be served on or before (date):
- b.  You are ordered to comply with the temporary orders attached.
- c.  Other (specify):

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

**NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the income of both parents. You should supply the court with information about your income. Otherwise, the child support order will be based on the information supplied by the other parent.**

**You do not have to pay any fee to file responsive declarations in response to this *Order to Show Cause (UIFSA)*, including a completed *Income and Expense Declaration (FL-150)* or *Financial Statement (Simplified) (FL-155)* that will show your income. In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least ten calendar days before the hearing date.**

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR ( <i>Name</i> ): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>NOT APPROVED BY THE JUDICIAL COUNCIL</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER:  RESPONDENT:  OTHER:	
<b>RESPONSE TO UNIFORM SUPPORT PETITION</b>	CASE NUMBER:

**YOU MUST FILE THIS RESPONSE WITH THE COURT IF YOU WISH TO OPPOSE THE LAWSUIT.**

1.  **PARENTAGE**

a. I am the parent of the following children (*specify all children listed in the petition*):

- |     | <u>Child's name</u>  | <u>Date of birth</u> |
|-----|--|----------------------|
| (1) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                      |
| (2) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                      |
| (3) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                      |
| (4) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                      |
| (5) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                      |
| (6) | <input type="checkbox"/> Additional children are listed on a page attached to this response. |                      |

b.  A voluntary declaration of paternity has been signed by the parents and is attached.

2.  I request that a genetic test to determine parentage be done for all children for whom I have checked a "No" box above.

3. **CHILD SUPPORT**

- a.  I agree to pay support as requested in this action.
- b.  I disagree with the support requested.  Attached is my completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). (NOTE: You can file this response without either of these forms.)

4. **OTHER ORDERS**

- a.  I agree to the other orders requested.
- b.  I disagree with the other requested orders as follows (*specify*):

5.  I request a court hearing.

PETITIONER:  RESPONDENT:  OTHER:	CASE NUMBER:
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6. My address and telephone number for receipt of all notices and court dates until I file a change of address with the court and with the petitioner or petitioner's attorney and/or the local child support agency are as follows:

Address:  
 City and zip code:  
 Home telephone:  
 Work telephone:

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 DECLARANT)

**An adult *other than you* must complete the Proof of Service below and provide a copy of this response to the petitioner or petitioner's attorney and/or the local child support agency at the address listed on the summons.**

**PROOF OF SERVICE**

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served this response and any other forms filed with the response as follows (*check a. or b. below for each person served*):

- a.  **Personal service.** I personally delivered a copy of this response as follows:
- |  |   |
|--|---|
| <input type="checkbox"/> (1) Name of party or attorney served: | <input type="checkbox"/> (2) Name of local child support agency served: |
| (a) Address where delivered:                                   | (a) Address where delivered:  |
| (b) Date of delivery:  | (b) Date of delivery:   |
| (c) Time of delivery:  | (c) Time of delivery:   |

- b.  **Mail.** I deposited this response in the United States mail, in a sealed envelope with first-class postage fully prepaid, addressed as follows:
- |  |   |
|--|---|
| <input type="checkbox"/> (1) Name of party or attorney served: | <input type="checkbox"/> (2) Name of local child support agency served: |
| (a) Address:   | (a) Address:  |
| (b) Date of mailing:   | (b) Date of mailing:  |
| (c) Time of mailing:   | (c) Time of mailing:  |

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 PERSON WHO SERVED RESPONSE)

**This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party object to the commissioner acting as a temporary judge. The court commissioner may still hear your case to make findings and recommendations to a judge. However, if you object to the commissioner acting as a temporary judge, an order will not be made until a judge reviews your case.**

# INFORMATION SHEET FOR RESPONSE TO UNIFORM SUPPORT PETITION

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Response to Uniform Support Petition* (form FL-520) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form.

You must file the completed response and attachments with the court clerk within 30 days of the date you received the *Uniform Support Petition* (form FL-500). The address of the court clerk is the same as the one shown for the superior court on the summons. You may have to pay a filing fee. If you cannot afford to pay the filing fee, contact the court clerk. **Keep two copies of the filed response form and its attachments. Serve one copy on the petitioner or petitioner's attorney and/or the local child support agency and keep the other copy for your records. (See *Information Sheet for Service of Process*, form FL-611.)**

## INSTRUCTIONS FOR COMPLETING THE RESPONSE FORM (TYPE OR PRINT FORM IN INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box if it is not already there.

Item 1: If you are responding to a question of paternity, check the "parentage" box.

- a. For each child listed on the response form, you must check the "yes" box if you agree that you are that child's parent or check the "no" box if you do not think or you are not sure whether you are that child's parent. You must write in the name of each child listed in the *Uniform Support Petition* if your response form does not include the names of any children.
- b. If you and the other parent have signed a voluntary declaration of paternity you should attach it to this form and check this box.

Item 2: If the local child support agency filed the *Uniform Support Petition*, the local child support agency will tell you when and where to go for the test. The local child support agency's office will pay for the cost of the test now. If the court decides that you are the parent, you may have to repay this cost to the local child support agency.

Item 3: a. Check this box if you agree to pay the support asked for in the *Uniform Support Petition* that you received.  
b. If you disagree with the support asked for in the *Uniform Support Petition*, you should check this box. If you have documents that prove your reasons for disagreeing with the request in the *Uniform Support Petition*, you should attach documents to this form.

Item 4: a. Check this box if you agree to the other orders requested in the *Uniform Support Petition* that you received.  
b. If you disagree with the orders requested in the *Uniform Support Petition*, you should check this box.

Item 5: Check this box if you want a court hearing. The petitioner or the local child support agency may also schedule a hearing whether or not you have checked this box.

Item 6: You must list your address and phone numbers where you can receive all notices and court dates. You must let the court know whenever your address changes. You may not receive important notices that affect you if the court does not have your current address.

You must date the response form, print your name, and sign the form under a penalty of perjury. When you sign the response form, you are stating that the information you have provided is true and correct.

Instructions for how to complete the Proof of Service section of the response form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the response and its attachments must fill out this section of the form.

**You cannot serve your own response.**

If you need assistance with this form, contact an attorney or the family law facilitator in your county. The family law facilitator can give you free help with this form.



PETITIONER: RESPONDENT:	CASE NUMBER:
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**NOTICE OF TRANSFER**

You are notified that all pleadings, orders, and other documents filed in this case have been transferred to the tribunal specified in item 5 on page 1.

**CLERK'S CERTIFICATE OF MAILING**

6. I certify that I am not a party to this cause and that a copy of this *Ex Parte Application for Transfer and Order (UIFSA)* was sent to Petitioner, Respondent, the California Central Registry, and the child support agency of the transferring and receiving jurisdictions by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the appropriate person or agency, sealed, and deposited with the United States Postal Service

at (*place*):

on (*date*):

Date:

Clerk, by \_\_\_\_\_, Deputy

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<b>NOTICE OF REGISTRATION OF OUT-OF-STATE SUPPORT ORDER</b>  <input type="checkbox"/> Support Order <input type="checkbox"/> Income Withholding Order	CASE NUMBER:

- To (name):
- You are notified that an  Out-of-State Support Order  Out-of-State Order for Income Withholding has been registered with this court. A copy of the order and the Registration Statement are attached.
- The amount of arrears is specified in item 1 on the attached Registration Statement.
- The registered order is enforceable in the same manner as a support order made by a California court as of the date the Registration Statement is filed.
- If you want to contest the validity or enforcement of the registered order, you must request a hearing within 25 days of the date that this notice was mailed to you (see below for clerk's date of mailing). You can request a hearing by completing and filing a Request for Hearing Regarding Registration of Support Order (form FL-575).
- If you fail to contest the validity or enforcement of the attached order within 25 days of the date this notice was mailed, the order will be confirmed by the court and you will not be able to contest any portion of the order including the amount of arrears as specified in item 1 of the Registration Statement.

**CLERK'S CERTIFICATE OF MAILING**

1. I certify that I am not a party to this cause and that a copy of the registration statement with a copy of the out-of-state order were sent to the person named in item 1 by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the person named in item 1 only at the address in the registration statement, sealed, and deposited with the United States Postal Service

at (place):  
on (date):

2. Copy sent to local child support agency on (date):

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address</i> ):    TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR ( <i>Name</i> ): _____	<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:	
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:  OTHER PARENT:	
<b>REQUEST FOR HEARING REGARDING REGISTRATION OF SUPPORT ORDER</b> <input type="checkbox"/> California Support Order <input type="checkbox"/> Out-of-State Support Order	CASE NUMBER: _____

**NOTICE OF HEARING**

1. A hearing on this application will be held as follows (*see instructions on how to get a hearing date*):

a. Date:	Time:	Dept:	Div:	Room:
----------	-------	-------	------	-------

b. The address of the court:     same as noted above     other (*specify*):

2. I request that service of the registration of support be vacated (canceled) because:

- a.  I am not the Obligor named in the Registration Statement.
- b.  The court or tribunal that issued the order did not have personal jurisdiction over me.
- c.  The support order was obtained by fraud.
- d.  The support order has been vacated, suspended, or modified by a later order. (*Please attach a copy of the later order.*)
- e.  The order has been stayed pending appeal.
- f.  The amount of arrears in section 1 of the Registration Statement is incorrect. The correct amount of arrears is (*specify amount*): \$ \_\_\_\_\_  Supporting documents attached.
- g.  Some or all of the arrears are not enforceable.
- h.  Other (*specify*):

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 DECLARANT)

PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:  OTHER PARENT:	CASE NUMBER:
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**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the *Request for Hearing Regarding Registration of Support Order* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at *(place)*: \_\_\_\_\_, California,  
 on *(date)*: \_\_\_\_\_

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**INFORMATION SHEET FOR REQUEST FOR HEARING  
REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER/  
OUT-OF-STATE SUPPORT ORDER**

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of Support Order* form (FL-575) if you do not have an attorney representing you. Your attorney, if you have one, should complete this form. You can get free help with this form from the family law facilitator in your county.

**This form should be used if you received a notice or statement of registration telling you that a support order is being registered in a California court, but you do not want that support order registered.**

You must file your completed request for hearing with the court clerk. You must also give the court clerk addressed envelopes with postage paid to mail copies of your request for hearing to the other parties. The address of the court clerk is the same as the one shown for the superior court on the notice or statement of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get this form from the court clerk, the family law facilitator, or online at [www.courts.ca.gov](http://www.courts.ca.gov).

**INSTRUCTIONS FOR COMPLETING THE REQUEST FOR HEARING REGARDING REGISTRATION FORM (TYPE OR PRINT IN INK):**

First page, first box, top of form, left side: Print your name, address, and phone number in this box.

Front page, second box, left side: Print the name of your county and the court's address in this box. Use the same address for the court that is on the notice or statement of registration form you received.

Front page, third box, left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed on the notice or statement of registration you received.

Front page, fourth box, left side: Check the box by "California Support Order" if the order being registered was established in California, or check the box by "Out-of-State Order" if the order being registered was **NOT** established in California.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also shown on the notice or statement of registration you received.

1. Before you file your request for hearing with the court clerk you must ask the court clerk to set a hearing date for you. The court clerk will give you the information you need to complete this section.
2. In this section you are telling the court why you do not want the support order to be registered. You must check the box by your reason.
  - a. Check this box if you are not a person named in the notice or statement of registration you received.
  - b. You should check this box if the court that issued the support order did not have jurisdiction over you to issue the order. You may need legal advice to find out if this is a valid reason in your case.
  - c. Check this box if your support order was obtained by fraud. You may need legal advice to find out if this is a valid reason in your case.
  - d. You should check this box if a court has suspended or vacated your support order. You should also check this box if your support order was modified by a later order. **If the order was modified, you must attach a copy of your most recent support order to your request for hearing.**
  - e. Check this box if you have already filed an appeal to your support order and a court has stopped the order until the appeal is decided.

**Information Sheet for Request for Hearing Regarding Registration of  
Support Order (continued)**

- f. You should check this box if you disagree with the amount of arrearage shown on the registration statement. You must write in the correct amount of the arrearage in the space provided.
- g. Check this box only if your support was made by a court outside California and cannot be enforced due to the statute of limitations in that jurisdiction.
- h. Check this box if you have another reason to object to the registration of the support order.

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as on the front page.

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/ Plaintiff, Respondent/ Defendant, and Other Parent.

You must print the name and address of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in the brackets. The names are the same as those at the top of the page. You also must provide the court clerk with stamped envelopes addressed to each of the other parties.

If you need assistance with this form, contact an attorney or the family law facilitator in your county.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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UIFSA CHILD SUPPORT ORDER JURISDICTIONAL ATTACHMENT

- TO  **Order After Hearing (form FL-687)**  
 **Stipulation and Order (form FL-625)**  
 **Other (specify):**

THE COURT FINDS THE FOLLOWING:

- All parties have left the issuing state or foreign country,  Petitioner  Respondent  Other Parent is the party requesting modification and resides in (state or foreign country).  Petitioner  Respondent  Other Parent is the non requesting party and resides in California. This court assumes continuing, exclusive jurisdiction under Family Code section 5700.611 and modifies the order.
- (state) is the issuing state of the support order.  Petitioner  Respondent  Other Parent resides in the issuing state.  Petitioner  Respondent  Other Parent resides in California. Under Family Code section 5700.611(a)(2), the court finds that the parties filed consent in the issuing state for California to assume continuing, exclusive jurisdiction over support. This court assumes jurisdiction and modifies the order accordingly.
- California is the issuing state of the support order.  Petitioner  Respondent  Other Parent is the party requesting modification and resides in (state or foreign country).  Petitioner  Respondent  Other Parent resides outside the United States, in (country). Under Family Code section 5700.611(f), California retains jurisdiction to modify the order.
- All parties have left the issuing state, and reside in California. This court assumes jurisdiction under Family Code section 5700.613 to modify support and domesticates the support issues.
- Under Family Code section 5700.615, this court finds that the foreign country that issued the foreign support order (country), cannot or will not modify its order. This court assumes jurisdiction and modifies the order accordingly.
- The parties have agreed that neither of them currently reside in California, which is the state that issued the support order.  Petitioner  Respondent  Other Parent resides in (state or foreign country).  Petitioner  Respondent  Other Parent resides in (state or foreign country). Under Family Code section 5700.205(a)(2), the parties consent for California to retain continuing, exclusive jurisdiction to modify the support order.
- The parties have agreed that California is the state that issued the support order.  Petitioner  Respondent  Other Parent resides in California.  Petitioner  Respondent  Other Parent resides in (state). The parties consent under Family Code section 5700.205(b)(1) for (state) to assume continuing, exclusive jurisdiction and modify the order.

THIS IS A COURT ORDER.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i>   TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(name):</i> _____	<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: AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<b>REQUEST FOR HEARING REGARDING REGISTRATION OF A CONVENTION SUPPORT ORDER</b>	CASE NUMBER: _____

**NOTICE OF HEARING**

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date and for more information about what a Convention support order is and how to fill out this form):*

a. Date:	Time:	Dept.:	Div.:	Room:
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b. The address of the court  same as noted above  other *(specify):*

2. I request that the court refuse recognition and enforcement of the Convention support order because:

- a.  Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.
- b.  The court or tribunal that issued the order did not have personal jurisdiction as listed in Family Code section 5700.201.
- c.  The order is not enforceable in the country that issued it.
- d.  The order was obtained by fraud in connection with a matter of procedure.
- e.  A record registering this order as required by Family Code section 5700.706 is not authentic or lacks integrity.
- f.  A case between the same parties and having the same purpose is pending before a court in California, and that case was the first to be filed.
- g.  The order is incompatible with a more recent support order involving the same parties and having the same purpose. The more recent support order is entitled to recognition and enforcement under Family Code sections 5700.101–5700.905.
- h.  The alleged arrears have been paid in whole or in part.
- i.  I did not attend the hearing, nor did I have a lawyer in the country that issued the order. The law of the issuing country provides for prior notice of proceedings, but I did not have proper notice of the proceedings or an opportunity to be heard.
- j.  I did not attend the hearing, nor did I have a lawyer in the country that issued the order. The law of that county does not provide for prior notice of the proceedings, and I did not have proper notice of the order or an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.
- k.  The order was made in violation of Family Code section 5700.711.

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 DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the *Request for Hearing Regarding Registration of a Convention Support Order* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed

at (*place*): \_\_\_\_\_, California

on (*date*): \_\_\_\_\_

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

**INFORMATION SHEET FOR REQUEST FOR HEARING  
REGARDING REGISTRATION OF A CONVENTION SUPPORT ORDER**

(Do NOT deliver this information sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of a Convention Support Order* (form FL-592) if you do not have an attorney representing you. Your attorney, if you have one, should complete this form.

**This form should be used if you received a notice or statement of registration telling you that a support order made in another state or country is being registered in a California court, but you do not want that support order registered.**

A Convention Support Order is one that was made under the *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance Concluded at the Hague on November 23, 2007*. The Convention is now part of Family Code sections 5700.101–5700.905.

You must file your completed request for hearing with the court clerk. You must also give the court clerk addressed envelopes with postage paid to mail copies of your request for hearing to the other parties. The address of the court clerk is the same as the one shown for the superior court on the notice or statement of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get this form from the court clerk, from the family law facilitator, or from the California Courts website [www.courts.ca.gov](http://www.courts.ca.gov).

**INSTRUCTIONS FOR COMPLETING THE REQUEST FOR HEARING REGARDING REGISTRATION FORM (YOU CAN COMPLETE THE FORM ON A COMPUTER, TYPE, OR PRINT IN INK):**

First page, first box, top of form, left side: Print your name, address, and phone number in this box.

First page, second box, left side: Print the court's address in this box. Use the same address for the court that is on the notice or statement of registration form you received.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Responded/Defendant, and Other Parent in this box. Use the same names listed on the notice or statement of registration form you received.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also shown on the notice or statement of registration you received.

1. Before you file your request for hearing with the court clerk, ask the court clerk to set a hearing date for you. The court clerk will give you the information you need to complete this section.
2. In this section you are telling the court why you do not want the support order to be recognized or enforced in California. Check the box by your reason(s).
  - a. Check this box if recognition and enforcement of the order conflicts with public policy. This includes the failure of the court or tribunal issuing the order to provide you with an opportunity to be heard through notice and due process.
  - b. Check this box if the court or tribunal that issued the support order did not have jurisdiction over you to issue the order.
  - c. Check this box if the order cannot be enforced in the country that issued it.
  - d. Check this box if your support order was obtained by fraud.
  - e. Check this box if the required document(s) accompanying this order is not authentic or whole.
  - f. Check this box if there is a case between the same parties and having the same purpose awaiting a decision before a court in California, and that case was filed first.
  - g. Check this box if the order is conflicting with a more recent support order between the same parties and having the same purpose.
  - h. Check this box if you have paid all of the alleged arrears or some of the alleged arrears.
  - i. Check this box if the country issuing the order requires prior notice of a hearing, but you did not receive notice of the hearing and you did not attend the hearing, and you did not have an attorney representing you in the hearing.
  - j. Check this box if the country issuing the order does not require prior notice of proceedings, you did not receive notice of the hearing and you did not have the opportunity to be heard in the proceeding.
  - k. Check this box if the order was made in violation of Family Code section 5700.711 because it was changed when you were a resident of the country where the support order was issued, and you did not agree to the case being heard in California either expressly or by defending yourself without objecting to the case being heard in California as soon as possible. If the country where your order was issued will not or cannot change the support order or make a new one, the case may be heard in California.

**INFORMATION SHEET FOR REQUEST FOR HEARING  
REGARDING REGISTRATION OF A CONVENTION SUPPORT ORDER  
(continued)**

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as on the front page.

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent.

You must print the name and address of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in the brackets. The names are the same as those at the top of the page. You also must provide the court clerk with stamped envelopes addressed to each of the other parties.

If you need assistance with this form, contact an attorney or the family law facilitator in your county. The family law facilitator can help you with this form for free.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>NOT APPROVED BY THE JUDICIAL COUNCIL</b></p>
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<p style="text-align: center;"><b>NOTICE OF REGISTRATION OF A CONVENTION SUPPORT ORDER</b></p>	CASE NUMBER:

- To *(name)*:
- You are notified that a Convention Support Order has been registered with this court. A copy of the following is attached:
  - Complete text of the order
  - Abstract of the order
  - Record stating the support order is enforceable in the issuing country
  - Record attesting proper notice and opportunity to be heard, if respondent did not appear and was not represented
  - Record showing the amount of arrears, if any
  - Record showing a requirement for automatic adjustment of support, if any
  - Record showing the extent to which the applicant received free legal assistance, if necessary
- The amount of arrears is specified in item 1 on the attached Transmittal Form under Article 12(2).
- The registered order is enforceable in the same manner as a support order made by a California court as of the date the Transmittal Form under Article 12(2) is filed.
- If you want to contest the validity or enforcement of the registered order, you must request a hearing within 30 days if you are within the United States, or within 60 days if residing outside the United States, of the date that the notice was mailed to you *(see below for clerk's date of mailing)*. You can request a hearing by completing and filing a *Request for Hearing Regarding Registration of a Convention Support Order* (form FL-592).
- If you fail to contents the validity or enforcement of the attached order within 30 days, or 60 days if residing outside of the United States, of the date this notice was mailed, the order will be confirmed by the court and you will not be able to contest any portion of the order including the amount of arrears as specified in item 1 of the Transmittal Form under Article 12(2).

**CLERK'S CERTIFICATE OF MAILING**

1. I certify that I am not a party to this cause, and that a copy of the letter of transmittal requesting registration with a copy of the convention support order were sent to the person named in item 1 by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the person named in item 1 only at the address in the letter of transmittal requesting registration, sealed, and deposited with the United States Postal Service

at *(place)*:

at *(date)*:

2. Copy sent to local child support agency on *(date)*:

Date:

Clerk, by \_\_\_\_\_, Deputy

## UIFSA Conversion Chart (California Statutes)

Current Family Code	Future Family Code	Title
<b>Article I – General Provisions</b>		
4900	5700.101	Short Title
4901	5700.102	Definitions
4902	5700.103	State Tribunal and Support Enforcement Agency
4903	5700.104	Remedies Cumulative
n/a	5700.105	Application of UIFSA to Resident of Foreign Country and Foreign Support Proceeding
<b>Article II – Jurisdiction</b>		
4905	5700.201	Bases for Jurisdiction over Nonresident
4906	5700.202	Duration of Personal Jurisdiction
4907	5700.203	Initiating and Responding Tribunal of State
4908	5700.204	Simultaneous Proceedings
4909	5700.205	Continuing, Exclusive Jurisdiction to Modify Child Support Order
4910	5700.206	Continuing, Exclusive Jurisdiction to Enforce Child Support Order
4911	5700.207	Determination of Controlling Child Support Order
4912	5700.208	Child Support Orders for Two or More Obligees
4913	5700.209	Credit for Payments
4913.5*	5700.210	Application of UIFSA to Nonresident Subject to Personal Jurisdiction
4914*	5700.211	Continuing, Exclusive Jurisdiction to Modify Spousal Support Order
<b>Article III – Civil Provisions of General Application</b>		
4915	5700.301	Proceedings under UIFSA
4916	5700.302	Proceedings by Minor Parent
4917	5700.303	Application of Law of State
4918	5700.304	Duties of Initiating Tribunal
4919	5700.305	Duties and Powers of Responding Tribunal
4920	5700.306	Inappropriate Tribunal
4921	5700.307	Duties of Support Enforcement Agency
4922	5700.308	Duty of Attorney General
4923	5700.309	Private Counsel
4924	5700.310	Duties of State Information Agency
4925	5700.311	Pleadings and Accompanying Documents
4926	5700.312	Nondisclosure of Information in Exceptional Circumstances

4927	5700.313	Costs and Fees
4928	5700.314	Limited Immunity of Petitioner
4929	5700.315	Nonparentage as Defense
4930	5700.316	Special Rules of Evidence and Procedure
4931	5700.317	Communications Between Tribunals
4932	5700.318	Assistance with Discovery
4933	5700.319	Receipt and Disbursement of Payments
<b>Article IV – Establishment of Support Order or Determination of Parentage</b>		
4935	5700.401	Establishment of Support Order
n/a	5700.402	Proceeding to Determine Parentage
<b>Article V – Enforcement of Support Order Without Registration</b>		
4940	5700.501	Employer’s Receipt of Income Withholding Order of Another State
4941	5700.502	Employer’s Compliance with Income Withholding Order of Another State
4942	5700.503	Employer’s Compliance with Two or More Income Withholding Orders
4943	5700.504	Immunity from Civil Liability
4944	5700.505	Penalties for Noncompliance
4945	5700.506	Contest by Obligor
4946	5700.507	Administrative Enforcement of Orders
<b>Article VI – Registration, Enforcement, and Modification of Support Order</b>		
<b>Part 1 – Registration for Enforcement of Support Order</b>		
4950	5700.601	Registration of Order for Enforcement
4951	5700.602	Procedure to Register Order for Enforcement
4952	5700.603	Effect of Registration for Enforcement
4953	5700.604	Choice of Law
<b>Part 2 – Contest of Validity or Enforcement</b>		
4954	5700.605	Notice of Registration of Order
4955	5700.606	Procedure to Contest Validity or Enforcement of Registered Support Order
4956	5700.607	Contest of Registration or Enforcement
4957	5700.608	Confirmed Order
<b>Part 3 – Registration and Modification of Child Support Order of Another State</b>		
4958	5700.609	Procedure to Register Child Support Order of Another State for Modification
4959	5700.610	Effect of Registration for Modification
4960	5700.611	Modification of Child Support Order of Another State
4961	5700.612	Recognition of Order Modified in Another State
4962	5700.613	Jurisdiction to Modify Child Support Order of Another State when Individual Parties Reside in this State
4963	5700.614	Notice to Issuing Tribunal of Modification
<b>Part 4 – Registration and Modification of Foreign Child Support Order</b>		

4964*	5700.615	Jurisdiction to Modify Child Support Order of Foreign Country
n/a	5700.616	Procedure to Register Child Support Order of Foreign Country for Modification
<b>Article VII – Support Proceeding Under Convention</b>		
n/a	5700.701	Definitions
n/a	5700.702	Applicability
n/a	5700.703	Relationship of Department to United States Central Authority
n/a	5700.704	Initiation by Department of Support Proceeding Under Convention
n/a	5700.705	Direct Request
n/a	5700.706	Registration of Convention Support Order
n/a	5700.707	Contest of Registered Convention Support Order
n/a	5700.708	Recognition and Enforcement of Registered Convention Support Order
n/a	5700.709	Partial Enforcement
n/a	5700.710	Foreign Support Agreement
n/a	5700.711	Modification of Convention Child Support Order
n/a	5700.712	Personal Information; Limit on Use
n/a	5700.713	Record in Original Language; English Translation
<b>Article VIII – Interstate Rendition</b>		
4970	5700.801	Grounds for Rendition
4971	5700.802	Conditions of Rendition
<b>Article IX – Miscellaneous Provisions</b>		
4975	5700.901	Uniformity of Application and Construction
n/a	5700.902	Transitional Provision
4976	5700.903	Severability Clause
n/a	5700.905	Emergency regulations
<b>Additional Provisions</b>		
4977	REPEAL	Repealed; not part of uniform law
4978	REPEAL	Repealed; not part of uniform law
5000	17404.1	Relocated within Family Code; not part of UIFSA
5001	17404.2	Relocated within Family Code; not part of UIFSA
5002	17404.1	Relocated within Family Code; not part of UIFSA
5003	17404.3	Relocated within Family Code; not part of UIFSA
5005	17407.5	Specific authority relocated within Family Code; not part of UIFSA; see this section regarding

		validity and revocation of State Reciprocal agreements
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\*Section exists in UIFSA 2001, but not UIFSA 1996. California codified UIFSA 2001, but with contingent operation. UIFSA 2001 never became operative under those terms, but is mentioned here as many are familiar with those sections.

## Convention Support Order Contest

### **SECTION 707. CONTEST OF REGISTERED CONVENTION SUPPORT ORDER.**

5700.707

(a) Except as otherwise provided in this [article], Sections 605 through 608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest **not later than 30 days** after notice of the registration, **but if the contesting party does not reside in the United States**, the contest must be filed **not later than 60 days** after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in Section 708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction;

and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

**SECTION 708. RECOGNITION AND ENFORCEMENT OF REGISTERED  
CONVENTION SUPPORT ORDER.**

**5700.708**

(a) Except as otherwise provided in subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with Section 201;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 706 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this [act] in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 711.

(c) If a tribunal of this state does not recognize a Convention support order under subsection (b)(2), (4), or (9):

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the [governmental entity] shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under Section 704.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** December 10, 2015

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Simplifying Limited Scope Representation Procedures

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Bonnie Hough, 415-865-7668, [bonnie.hough@jud.ca.gov](mailto:bonnie.hough@jud.ca.gov) and Gabrielle D. Selden, 415-865-8085, [gabrielle.selden@jud.ca.gov](mailto:gabrielle.selden@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda:

FL-950, 955, 956 and 958 Limited Scope Representation; Rule 5.425

Amend to simplify the procedure for withdrawing when scope of work has been completed. The State Bar reports that many attorneys are unwilling to make court appearance because the procedure that we have adopted for withdrawal is too complicated. Most states have adopted a simpler process. Proposed changes would likely reduce the number of hearings regarding withdrawal of counsel and promote more representation in family law matters.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

SPR16-\_\_

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Title	Action Requested
Family Law: Simplifying Limited Scope Representation Procedures	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.425; adopt form FL-957; revise forms FL-950, FL-955, FL-956, and FL-958	January 1, 2017
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Bonnie R. Hough, 415-865-7668 bonnie.hough@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Gabrielle D. Selden, 415-865-8085 gabrielle.selden@jud.ca.gov

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes simplifying the procedure for an attorney to withdraw from limited scope representation when the attorney has completed the work agreed upon with the party/client in a family law matter. The proposal is intended to respond to a request from the California State Bar and family law attorneys who report that many attorneys are unwilling to make court appearances because the current procedure for withdrawal is too complicated. Incorporating, in part, a simpler process adopted in many states, the committee proposes amending rule 5.425 of the California Rules of Court, adopting one new form, and revising four forms, which would likely reduce the number of hearings regarding withdrawal of counsel and promote more limited scope representation in family law matters.

### **The Proposal**

#### ***Background***

Effective July 1, 2003, the Judicial Council adopted rules and forms “to enable limited scope representation so that attorneys can assist self-represented litigants, thereby increasing access to

*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.*

justice and encouraging court efficiency.”<sup>1</sup> The council adopted the rules and forms in response to the request and recommendations of the Board of Governors of the State Bar of California.

In response to recent suggestions by the California Commission on Access to Justice—as well as family law attorneys and judges—that the rules and forms should be simplified and reflect practice in other states, the committee proposes changing the current procedure in the rule and forms to allow the attorney to file a *Notice of Completion of Limited Scope Representation* to withdraw from the case, instead of filing a motion to withdraw, if the client fails to sign a substitution of attorney.

Revising the Judicial Council’s rules and forms relating to limited scope representation would:

- Respond to concerns and problems identified that attorneys would be more willing to accept limited scope assignments but for the difficulty associated with withdrawing from that assignment when the work has been completed;
- Increase court efficiencies by eliminating, in most cases, the need for the clerk to (1) process the application to be relieved as counsel each time a party/client fails to substitute out of the case on completion of the representation, (2) process the proposed order submitted with the application, and/or (3) set a hearing on the matter; and
- Advance the Judicial Council’s goals and objectives of ensuring meaningful access to justice for all litigants and increasing the availability of legal representation and providing a continuum of legal services in family court.<sup>2</sup>

***Rule 5.425. Limited Scope Representation; application of rules***

Rule 5.425 of the California Rules of Court specifies the procedures associated with “noticed limited scope representation.” For this type, a *Notice of Limited Scope Representation* (form FL-950) must be served and filed with the court. The rule then provides the procedures to be relieved as counsel on completion of the representation. It requires the party to file a substitution of attorney on completion of the agreed-upon legal services, and also specifies the actions for the attorney to take if the party fails to sign the substitution of attorney.

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<sup>1</sup> Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Family Law: Limited Scope Representation* (Mar. 14, 2003), p. 1.

<sup>2</sup> Recommendation III of the *Elkins Family Law Task Force Final Report and Recommendations* provides: “Equal justice for all is basic to our democracy. The first step toward equal justice is providing everyone, regardless of his or her economic circumstances, meaningful access to the courts. Today, too many people find themselves in family court without the assistance they need to present their cases. For those who are able to represent themselves, we need to provide more services to help them navigate the court system and get their day in court. For those who cannot represent themselves meaningfully, we need to find additional ways to increase representation.” See p. 48. The final report may be found at <http://www.courts.ca.gov/documents/elkins-finalreport.pdf>.

The rule requires that the attorney file an *Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-955), along with a proposed *Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-958) if the party/client fails to sign a substitute of attorney when the limited scope representation is complete. The next steps depend on whether the party/client files an objection to that application and proposed order.

- If the party/client does not object within 15 days of the service date, the clerk must forward the proposed order for judicial signature;
- If the party/client does file an *Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation* (form FL-956), then the court clerk must set a hearing no later than 25 days from the date that the objection was filed.

The proposed amendments to rule 5.425 would replace the above procedure if a party/client fails to sign a substitution of attorney following completion of the agreed-upon limited scope services. The amended rule would require that:

- The attorney file and serve a *Notice of Completion of Limited Scope Representation* (form FL-955).
- The attorney be deemed to have withdrawn from the case if the client does not file and serve an *Objection to Notice of Completion of Limited Scope Representation* (form FL-956) within 15 calendar days after the date that the *Notice of Completion* was served on the client.
- The other parties in the case or their attorneys must serve legal documents and notices on the party's last known address listed in the filed *Notice of Completion*, unless otherwise ordered by the court.

Further, subdivision (e)(3) of the rule would provide the following procedure if the party/client objects to the *Notice of Completion* within 15 days from the date that it was served on him or her:

- The party/client must file an *Objection to Notice of Completion of Limited Scope Representation* (form FL-956); and proposed *Order on Objection to Notice of Completion of Limited Scope Representation* (form FL-958);
- The court clerk must set a hearing on the *Objection* no later than 25 days from the date the objection is filed.

- The other parties in the case or their attorneys should serve legal documents and notices on the party’s last known address listed in the filed *Notice of Completion*, unless or until the court orders otherwise.
- The attorney must file a response to the objection at least nine court days before the hearing (or as ordered by the court).
- The attorney must file the court’s signed *Order on Objection to Notice of Completion of Limited Scope Representation* (form FL-958) and serve it on all parties or the attorneys for all parties who have appeared in the case.

***Notice of Limited Scope Representation (form FL-950)***

The committee proposes only minor technical changes to item 3 of this form. The order of the headings would change to be consistent with other family law forms. For example, item 3a (“Child support”) would be moved to item 3b, and item 3d (“Child custody and visitation”) would be moved to 3a. In addition, the headings under item 3 would be updated to be consistent with current forms. For example, “Child custody and visitation” would be changed to “Child custody and visitation (parenting time),” and “Spousal support” would be changed to “Spousal/Domestic partner support.”

***Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (form FL-955)***

The committee proposes changing the title of the form so that it is consistent with the proposed new procedures for withdrawing from limited scope representation. The proposed revisions include:

- Renaming the form *Notice of Completion of Limited Scope Representation* (form FL-955);
- Deleting the language in current item 1, which is a request to be relieved as counsel in the matter;
- Revising the notice to the party/client to reflect the procedure for objecting to the notice; and
- Revising the proof of service on page 2 to show the proposed new form title.

***Objection to Application to Be Relieved As Counsel Upon Completion of Limited Scope Representation (form FL-956)***

The committee proposes changing:

- The title of the form to *Objection to Notice of Completion of Limited Scope Representation* wherever it appears in the text.

- Item 3 to allow the party/client to indicate if the attorney should not be allowed to withdraw because he or she has failed to complete either services agreed upon or acts ordered by the court;
- The notice box to state the revised title of form FL-955; and
- The proof of service on page 2 to reflect the new form title.

***Response to Objection to Notice of Completion of Limited Scope Representation (form FL-957)***

The committee proposes that this new, optional form be approved for use by the attorney to respond when the party/client has filed an objection to the attorney's withdrawal.

***Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (form FL-958)***

The proposal would revise this form by changing the title to *Order on Objection to Notice of Completion of Limited Scope Representation* and deleting references to current procedures and forms titles that the committee proposes to change (replacing them with the proposed new names and procedures).

**Alternatives Considered**

The committee considered proposing a revision to the procedure to simply state that the filing and service of the attorney's *Notice of Completion* would relieve the counsel as attorney of record for the party/client. However, the committee decided to recommend further amendments to cover situations in which the party/client did not file a substitution of attorney and believed that the attorney had not completed the agreed-upon legal services or other acts ordered by the court. Although other states which have adopted rules regarding limited scope representation do not provide for this process in their limited scope representation rules, including this amendment would promote fairness for the litigant while still making the process of withdrawing from the case easier for the attorney who provided limited scope assistance.

The committee also considered proposing that the new form *Response to Objection to Notice of Completion of Limited Scope Representation* (form FL-957) be adopted for mandatory use. However, the committee decided to propose that the form be approved for optional use since it is not a legislatively mandated form.

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

The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, train court staff about the changes to the rules and forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts by clarifying and simplifying procedures.

## 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?
- Will this proposal improve access for low- and moderate-income litigants?

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 2 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. Cal. Rules of Court, rule 5.425, at pages 7–9
2. Forms FL-950, FL-955, FL-956, FL-957, FL-958, at pages 10–20

Rule 5.425 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 5.425. Limited scope representation; application of rules**

2  
3 (a)–(c) \* \* \*

4  
5 (d) **Noticed limited scope representation**

6  
7 (1) A party and an attorney must provide the required notice of their agreement  
8 for limited scope representation by serving other parties and filing with the  
9 court a *Notice of Limited Scope Representation* (form FL-950).

10  
11 (2) After the notice in (1) is received, ~~and until either a substitution of attorney or~~  
12 ~~an order to be relieved as attorney is filed and served~~ the attorney will  
13 continue to represent the party until the following is filed and served:

14  
15 (A) A *Substitution of Attorney—Civil* (form MC-050);

16  
17 (B) A *Notice of Completion of Limited Scope Representation* (form FL-  
18 955) filed without objection by the client; or

19  
20 (C) An order to be relieved as attorney or record.

21  
22 (3) After the notice in (1) is received and until the attorney is relieved of his or  
23 her duties under (2):

24  
25 (A) The attorney must be served with documents that relate only to the  
26 issues identified in the *Notice of Limited Scope Representation* (form  
27 FL-950); and

28  
29 (B) The party must be served directly with documents that relate to all  
30 other issues outside the scope of the attorney’s representation.

31  
32 (e) **Procedures to be relieved as counsel on completion of limited scope**  
33 **representation**

34  
35 An attorney who has completed the tasks specified in the *Notice of Limited Scope*  
36 *Representation* (form FL-950) may use the following procedures in this rule to  
37 ~~request that he or she be relieved as attorney~~ withdraw as the party’s attorney in  
38 cases in which the attorney has appeared before the court as an attorney of record  
39 and the client has not signed a *Substitution of Attorney—Civil* (form MC-050):

40  
41 (1) ~~Application~~

42  
43 ~~An application to be relieved as attorney on completion of limited scope~~

1 representation under Code of Civil Procedure section 284(2) must be directed  
2 to the client and made on the *Application to Be Relieved as Counsel Upon*  
3 *Completion of Limited Scope Representation* (form FL-955).  
4

5 ~~(2)~~(1) Filing File and service serve of application a Notice of Completion of  
6 Limited Scope Representation; blank objection form  
7

8 (A) ~~The application to be relieved as attorney must be filed with the court~~  
9 The attorney must file a *Notice of Completion of Limited Scope*  
10 *Representation* (form FL-955) and served it on the client and on all  
11 other parties or attorneys for parties in the case. The client attorney  
12 must also be served the client with a blank *Objection to Application to*  
13 *Be Relieved as Counsel on Notice of Completion of Limited Scope*  
14 *Representation* (form FL-956).  
15

16 (B) The client has 15 calendar days after the date on the proof of service on  
17 the *Notice of Completion* to file the objection and a proposed order with  
18 the court and serve it on his or her attorney and on all other parties or  
19 attorneys for parties in the case.  
20

21 ~~(3)~~(2) No objection  
22

23 If the client does not object within the time permitted in (e)(1)(B): no  
24 objection is served and filed with the court within 15 days from the date that  
25 the *Application to Be Relieved as Counsel on Completion of Limited Scope*  
26 *Representation* (form FL-955) is served on the client; the attorney making the  
27 application must file an updated form FL-955 indicating the lack of  
28 objection, along with a proposed *Order on Application to Be Relieved as*  
29 *Counsel on Completion of Limited Scope Representation* (form FL-958). The  
30 clerk must then forward the order for judicial signature.  
31

32 (A) The attorney is deemed to have withdrawn from the case.  
33

34 (B) The other parties in the case or their attorneys must serve legal  
35 documents and notices on the party's last known address listed in the  
36 filed *Notice of Completion*, unless otherwise ordered by the court.  
37

38 ~~(4)~~(3) Objection  
39

40 If an objection to the application is served and filed within 15 days, the clerk  
41 must set a hearing date on the *Objection to Application to Be Relieved as*  
42 *Counsel on Completion of Limited Scope Representation* (form FL-956). The  
43 hearing must be scheduled no later than 25 days from the date the objection is

1 filed. The clerk must send the notice of the hearing to the parties and the  
2 attorney. To object to a *Notice of Completion of Limited Scope*  
3 *Representation* (form FL-955), the client must file and serve an *Objection to*  
4 *Notice of Completion of Limited Scope Representation* (form FL-956) and a  
5 proposed *Order on Objection to Notice of Completion of Limited Scope*  
6 *Representation* (form FL-958) within the time permitted in (e)(1)(B).  
7 Thereafter, the following procedures apply:  
8

- 9 (A) The court clerk must set a hearing on the objection no later than 25  
10 days from the date the objection is filed.  
11  
12 (B) The attorney must file a response to the objection at least 9 court days  
13 before the hearing (or as ordered by the court). A *Response to*  
14 *Objection to Notice of Completion of Limited Scope Representation*  
15 (form FL-957) may be used for this purpose.  
16  
17 (C) Following the hearing, the attorney must file the court’s signed *Order*  
18 *on Objection to Notice of Completion of Limited Scope*  
19 *Representation* (form FL-958) and have it served on all parties or the  
20 attorneys for all parties who have appeared in the case. The court may  
21 delay the effective date of the order until proof of service of a copy of  
22 the signed order has been filed with the court.  
23

24 (5) — *Service of the order*  
25

26 ~~If no objection is served and filed and the proposed order is signed, the~~  
27 ~~attorney who filed the *Application to Be Relieved as Counsel on Completion*~~  
28 ~~*of Limited Scope Representation* (form FL-955) must serve a copy of the~~  
29 ~~signed order on the client and on all parties or the attorneys for all parties~~  
30 ~~who have appeared in the case. The court may delay the effective date of the~~  
31 ~~order relieving the attorney until proof of service of a copy of the signed~~  
32 ~~order on the client has been filed with the court.~~  
33

34 (f) \* \* \*  
35

PARTY WITHOUT ATTORNEY OR 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: _____	
PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	
<b>NOTICE OF LIMITED SCOPE REPRESENTATION</b> <input type="checkbox"/> <b>AMENDED</b>	CASE NUMBER: _____

1. Attorney *name*:  
and party *name*:  
have an agreement that attorney will provide limited scope representation to the party.
  
2. Attorney will represent the party
  - at the hearing on *date*: \_\_\_\_\_  and for any continuance of that hearing
  - until submission of the order after hearing
  - until resolution of the issues checked on page 1 by trial or settlement
  - Other (*specify duration of representation*): \_\_\_\_\_
  
3. Attorney will serve as "attorney of record" for the party **only** for the following issues in the case:
  - a.  Child custody and visitation (parenting time): (1)  Establish (2)  Enforce  Modify (*describe in detail*):
  
  - b.  Child support: (1)  Establish (2)  Enforce (3)  Modify (*describe in detail*):
  
  - c.  Spousal/Domestic partner support: (1)  Establish (2)  Enforce (3)  Modify (*describe in detail*):
  
  - d.  Restraining order: (1)  Establish (2)  Enforce (3)  Modify (*describe in detail*):
  
  - e.  Division of property (*describe in detail*):

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--	--------------

f.  Pension issues *(describe in detail)*:

g.  Contempt *(describe in detail)*:

h.  Other *(describe in detail)*:

i.  [See attachment 3i.](#)

4. By signing this form, the party agrees to sign form MC-050, *Substitution of Attorney--Civil* at the completion of the representation as set forth above.

5. The attorney named above is "attorney of record" and available for service of documents only for those issues specifically checked on pages 1 and 2. For all other matters, the party must be served directly. The party's name, address, and phone number are listed below for that purpose.

Name:

Address *(for the purpose of service)*

Phone:

Fax No.

This notice accurately sets forth all current matters on which the attorney has agreed to serve as "attorney of record" for the party in this case. The information provided in this document is not intended to set forth all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PARTY)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF ATTORNEY)

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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PROOF OF SERVICE BY  PERSONAL SERVICE  MAIL

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**

2. I served a copy of the *Notice of Limited Scope Representation* as follows (check either a. or b. below):

a.  **Personal service.** The *Notice of Limited Scope Representation* was given to:

- (1) Name of person served:
- (2) Address where served:

- (3) Date served:
- (4) Time served:

b.  **Mail.** I placed a copy of the *Notice of Limited Scope Representation* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:

- (1) Name of person served:
- (2) Address where served:

- (3) Date of mailing:
- (4) Place of mailing (*city and state*):
- (5) I live in or work in the county where the forms were mailed.

3. Server's information:

- a. Name:
- b. Home or work address:

c. Telephone number:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE OF PERSON SERVING NOTICE)

PARTY WITHOUT ATTORNEY OR 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>           CASE NUMBER: _____
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/CLAIMANT: _____	
<b>NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION</b>	

1. In accordance with the terms of an agreement between (name):  petitioner  
 respondent  other party/claimant and myself, I agreed to provide limited scope representation.
  
2. I was retained as attorney of record for the limited scope services described in detail:  below  in the attached *Notice of Limited Scope Representation* (form FL-950)
  
3. On (date): \_\_\_\_\_ I completed all services within the scope of my representation and have completed all work ordered by the court.
  
4. The last known information for the  petitioner  respondent  other party/claimant (for the purpose of service):
  - a. Address: \_\_\_\_\_
  
  - b. Telephone number: \_\_\_\_\_

**NOTICE TO PARTY/CLIENT:** Your attorney has filed this *Notice of Completion of Limited Scope Representation* with the court stating that he or she no longer represents you in this action because the tasks that you agreed the attorney would perform for you have been completed. If this is correct, you now represent yourself in all aspects of your case.

**If you do not agree that these tasks have been completed and you want the attorney to continue to represent you until the tasks are completed, you must file an *Objection to Notice of Completion of Limited Scope Representation* (form FL-956) and a proposed *Order on Objection to Notice of Limited Scope Representation* (form FL-958) with the court within 15 calendar days of the date that this notice was served on you. You must also have copies of these forms served on your attorney and the other party (or the other party's attorney). If you do not file the *Objection* and proposed *Order*, the court will accept that the attorney completed all the tasks agreed upon in the *Notice of Limited Scope Representation* (form FL-950) and the attorney will be relieved as your attorney of record.**

Please refer to the *Proof of Service* on page 2 of this form to determine the date that the notice was served on you (if this form was served by mail, the date of service is 5 days after the date of mailing).

You should ONLY file an *Objection* if you believe that the attorney has not completed the tasks that he or she agreed to perform for you or actions ordered by the court. This procedure is NOT to be used to resolve other disagreements you may have with the attorney, such as about fees.

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

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

\_\_\_\_\_

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

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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PROOF OF SERVICE BY  PERSONAL SERVICE  MAIL

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Notice of Completion of Limited Scope Representation* and all attachments, as well as a blank *Objection to Notice of Completion of Limited Scope Representation* (form FL-956), as follows (*check either a. or b. below*):
  - a.  **Personal service.** The documents listed above were given to:
    - (1) Name of person served:
    - (2) Address where served:
  
    - (3) Date served:
    - (4) Time served:
  
  - b.  **Mail.** I placed a copy of the forms listed above in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
    - (1) Name of person served:
    - (2) Address where served:
  
    - (3) Date of mailing:
    - (4) Place of mailing (*city and state*):
    - (5) I live in or work in the county where the forms were mailed.
3. Server's information:
  - a. Name:
  - b. Home or work address:
  
  - c. Telephone number:

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

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME) ▶ \_\_\_\_\_

(SIGNATURE OF PERSON SERVING NOTICE)

PARTY WITHOUT ATTORNEY OR 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: _____	
PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	
<b>OBJECTION TO NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION</b>	CASE NUMBER: _____
HEARING DATE: _____ TIME: _____ DEPARTMENT OR ROOM: _____	

1. I am the  petitioner  respondent  other parent/claimant in this case.
2. I believe that my attorney did not complete all of the  services that he or she agreed to do  acts ordered by the court
3. I request that the court not allow my attorney to withdraw from representation until those services or acts have been completed.  
 The  services agreed upon  acts ordered by the court that remain to be completed are (specify): \_\_\_\_\_

[see Attachment 3.](#)

- 4 The reason that I think these tasks are supposed to be completed is (specify): \_\_\_\_\_

[see Attachment 4.](#)

**NOTICE**

If you object to your attorney's *Notice of Completion of Limited Scope Representation* (form FL-955), you must file this form with the clerk of the court where the *Notice of Completion* was filed and include a proposed *Order on Objection to Notice of Completion of Limited Scope Representation* (form FL-958). You must file the *Objection* and proposed *Order* within 20 calendar days of the date that the *Notice of Completion* was put in the mail to you. If you were personally served, the *Objection* and proposed *Order* must be filed 15 calendar days from the date the notice was given to you. That date is on the proof of service (page 2 of the *Notice of Completion*). You must also have the attorney and the other party (or the party's attorney) served with the *Objection* (a blank proof of service is on the back of the form) and the proposed *Order*.

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

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
 (SIGNATURE)

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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PROOF OF SERVICE BY  PERSONAL SERVICE  MAIL

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Objection to Notice of Completion of Limited Scope Representation* and all attachments and a proposed *Order on Objection to Notice of Completion of Limited Scope Representation* (form FL-958) as follows (check either a. or b. below):
  - a.  **Personal service.** The document listed above was given to:
    - (1) Name of person served:
    - (2) Address where served:
    - (3) Date served:
    - (4) Time served:
  - b.  **Mail.** I placed a copy of the forms listed above in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
    - (1) Name of person served:
    - (2) Address where served:
    - (3) Date of mailing:
    - (4) Place of mailing (*city and state*):
    - (5) I live in or work in the county where the forms were mailed.

3. Server's information:
  - a. Name:
  - b. Home or work address:
  - c. Telephone number:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PERSON SERVING NOTICE)

PARTY WITHOUT ATTORNEY OR 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:	
PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	
<b>RESPONSE TO OBJECTION TO NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION</b>	CASE NUMBER:
HEARING DATE: TIME: DEPARTMENT OR ROOM:	

1. In response to the *Objection to Notice of Completion of Limited Scope Representation* (form FL-956) filed by the  petitioner  respondent  other parent/claimant

- a.  I consent to the order requested.
- b.  I do not consent to the order requested.
- c.  I request an order to be relieved as counsel in this matter.

2. Response to the party's declaration about the services or acts remaining to be completed:  [see Attachment 2.](#)

3. Response to the party's declaration about the reasons he or she thinks the tasks need to be completed:  [see Attachment 3.](#)

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

Date:

\_\_\_\_\_  
 (SIGNATURE OF PERSON SERVING NOTICE)

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--	--------------

PROOF OF SERVICE BY  PERSONAL SERVICE  MAIL

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Response to Objection to Notice of Completion of Limited Scope Representation* and all attachments as follows (*check either a. or b. below*):
  - a.  **Personal service.** The document listed above was given to:
    - (1) Name of person served:
    - (2) Address where served:
    - (3) Date served:
    - (4) Time served:
  - b.  **Mail.** I placed a copy of the forms listed above in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
    - (1) Name of person served:
    - (2) Address where served:
    - (3) Date of mailing:
    - (4) Place of mailing (*city and state*):
    - (5) I live in or work in the county where the forms were mailed.
3. Server's information:
  - a. Name:
  - b. Home or work address:
  - c. Telephone number:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PERSON SERVING NOTICE)

PARTY WITHOUT ATTORNEY OR 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: _____	
PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	
<b>ORDER ON OBJECTION TO NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION</b>	CASE NUMBER: _____

1. The *Notice of Completion of Limited Scope Representation* (form FL-950) filed by (name of attorney): \_\_\_\_\_ declaring that all services within the scope of representation of (name of client): \_\_\_\_\_ and all work ordered by the court have been completed was filed on (date): \_\_\_\_\_

2. Client filed *Objection to Notice of Completion of Limited Scope Representation* (form FL-956) on (date): \_\_\_\_\_

3. The proceeding was heard as follows:  Uncontested  Contested  
 a. on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ in Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 by Judge (name): \_\_\_\_\_  Temporary Judge

b. The following persons were present at the hearing:  
 Petitioner  Attorney (name): \_\_\_\_\_  
 Respondent  Attorney (name): \_\_\_\_\_  
 Other parent/claimant  Attorney (name): \_\_\_\_\_

**4. THE COURT FINDS**

- a.  The attorney demonstrated that he or she has completed the services that the party and attorney agreed that the attorney would perform in the *Notice of Limited Scope Representation* (form FL-950) as well as any acts ordered by the court.
- b.  The party demonstrated that the attorney has either not completed the services that the party and the attorney agreed would be performed in the *Notice of Limited Scope Representation* (form FL-950) or the attorney has not completed acts ordered by the court.

**5. THE COURT ORDERS**

- a.  The attorney is relieved as attorney of record for the client/party
  - (1)  effective immediately.
  - (2)  effective upon the filing of the proof of service of this signed order on the client.
  - (3)  effective on (specify date): \_\_\_\_\_
  - (4) **NOTICE TO CLIENT/PARTY:** You now represent yourself in all aspects of your case. You may wish to seek other legal counsel regarding your case.

The court needs to know how to contact you. It is your responsibility to keep the court informed of your address. If the address in 5a(5) is wrong, you need to let the court and the other parties in the case know your correct mailing address as soon as possible. You can use *Notice of Change of Address or Other Contact Information* ([form MC-040](#)) for this purpose.

If you do not let the court and the other parties in the case know where to send you copies of papers, you may not get notices of hearings or orders in your case. Decisions may be made without your participation, and your case could be ended.

PETITIONER: RESPONDENT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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5. **THE COURT ORDERS (continued)**

a. (5) Current mailing address for party:

b.  The request of counsel to be relieved of limited scope representation is denied for the following reasons (*specify*):

c.  The court further orders (*specify*):

**NOTICE TO THE ATTORNEY SUBJECT TO THIS PROCEEDING:** You must serve copies of this order on the parties and their attorneys of record. Proof of service must be filed with the court.

Date:

\_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Termination of Jurisdiction Over Nonminor (amend Cal. Rules of Court, rule 5.555; revise forms JV-365 and JV-367)

*Committee or other entity submitting the proposal:*

(Family and Juvenile Law Advisory Committee)

*Staff contact (name, phone and e-mail):* Corby Sturges, 415-865-4507, [corby.sturges@jud.ca.gov](mailto:corby.sturges@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Amend JV-365, Termination of Juvenile Court Jurisdiction—Nonminor  
JV-365 is a mandatory Judicial Council form. This means that courts are required to use this form at the hearing to terminate jurisdiction for a youth who is 18 years of age or older. As a mandatory form, it is important that the form closely follow the legislative mandates. However, the Department of Social Services has requested that the Judicial Council consider amending this form to include other important, but not mandated, information to make the nonminors transition to their eligible benefits as seamless as possible.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR16-\_\_**

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Title	Action Requested
Juvenile Law: Termination of Jurisdiction Over Nonminor	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.555; revise forms JV-365 and JV-367	January 1, 2017
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507 <a href="mailto:corby.sturges@jud.ca.gov">corby.sturges@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes amending one rule of court and revising two Judicial Council forms to provide legally accurate information about available benefits to nonminors facing termination of juvenile court jurisdiction. The form revisions would implement amended statutory entitlements in response to recommendations received from the California Department of Social Services. The rule amendments would ensure consistency with the revised forms and with existing law. They would also make technical corrections to improve the rule's internal consistency and readability and to reduce the unnecessary repetition of statutory language.

### **The Proposal**

Sections 391 and 607.2–607.3 of the Welfare and Institutions Code require the juvenile court, before it terminates jurisdiction over a dependent youth or ward of the court who is more than 18 years old, to hold a hearing at which it must, as a condition to terminating jurisdiction, make certain factual findings and legal orders.<sup>1</sup> Those findings include whether the child welfare department or the probation department has provided the youth with the information, documents, and services required by sections 391(e) and 607.3(f) to help him or her prepare for the transition from foster care to independence. If the court determines that the department has complied with

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

*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.*

the statutory requirements, it may terminate jurisdiction. Otherwise, the court must determine whether jurisdiction should be continued until the department has done so.

*Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) is used by the child welfare or probation department to verify that it has provided the required information, documents, and services to a nonminor in anticipation of his or her transition to independent living when the juvenile court terminates its jurisdiction over the youth. After the department completes the form, the youth has an opportunity to review it, make corrections, and initial after each item to confirm his or her receipt of the specified information, document, or service. The youth then signs the completed form and returns it to the social worker or probation officer, who, under rule 5.555 of the California Rules of Court, must attach it to the report submitted to the court before the hearing on termination of jurisdiction.

On November 3, 2015, the Family and Juvenile Law Advisory Committee received a formal letter from Will Lightbourne, Director of the California Department of Social Services (CDSS), suggesting several revisions to form JV-365. Most of the information, documents, and services listed on the form are needed to help a former foster youth obtain benefits and access services after he or she leaves foster care. CDSS's suggestions, stemming from collaboration with the state Department of Health Care Services, are intended to promote the ability of a former foster youth to maintain his or her good health through access to health insurance, health care, and wholesome food. The committee endorses CDSS's suggestions and has incorporated them into this proposal.

The committee proposes revising item 7 on form JV-365 in three respects. First, item 7a is used to verify the department's provision of assistance with the former foster youth's application for Medi-Cal or other health insurance. Recent amendments to section 14005.28 of the code have rendered that specific assistance unnecessary.<sup>2</sup> The amended section instead entitles the youth to enrollment in Medi-Cal without an interruption in coverage. Although section 391 retains the language of the outdated requirement, the committee proposes revising item 7a to reflect the new requirements.<sup>3</sup>

Second, though item 7a on form JV-365 and rule 5.555 require the provision of information regarding availability of Medi-Cal coverage to former foster youth up to age 21, section 14005.28(a)(1) extends the availability of Medi-Cal coverage for these youth to age 26. CDSS

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<sup>2</sup> Section 14005.28 was amended by Sen. Bill 508 (Hernandez; Stats. 2014, ch. 831, § 4).

<sup>3</sup> Assembly Bill 1849, currently pending, would amend section 391 to bring it into conformity with section 14005.28. In addition, this bill would amend section 16501.1 to require verification of the placement agency's compliance with section 14005.28 in the youth's 90-day transition plan. The amendments and revisions in this proposal are intended to be consistent with the purpose of AB 1849.

Another pending bill, Assembly Bill 2000, would add section 607.6 to expand the probation department's duties to provide information, documents, and services to wards before the court terminates jurisdiction. The committee will monitor these bills to ensure that the proposed amendments and revisions are consistent with their provisions should they become law.

suggests revising item 7a to reflect the new age limit. The committee concurs, notwithstanding the language of section 391. It would be absurd for the department to document and the court to determine compliance with a requirement that no longer exists.

Third, CDSS suggests adding language to form JV-365 regarding specific assistance needed to maintain access to Medi-Cal benefits, including providing information regarding Medi-Cal eligibility and obtaining a Medi-Cal Benefits Identification Card (BIC). This information seems to fall within the scope of assisting the youth with continuous enrollment in Medi-Cal as required by section 14005.28. The committee proposes adding language to item 7a regarding this assistance.

Fourth, and finally, CDSS suggests using form JV-365 to document support for youth who would benefit from enrollment in the CalFresh program. This assistance seems to fall within the scope of assistance in obtaining employment or other financial support, as specified in section 391(e)(3). Indeed, item 7e currently includes an express reference to CalFresh as an example of financial support. All former foster youth are eligible for CalFresh; many, however, may not know or have the wherewithal to enroll. Adding this language to the form would emphasize the department's role in ensuring that each former foster youth leaving juvenile court supervision is aware of and able to take advantage of this benefit to have access to nutritious food.

When examining form JV-365 in response to CDSS's letter, the committee and staff identified additional elements of the form that required updating. The proposed revisions to this form, in turn, would require conforming amendments to rule 5.555, which addresses hearings to consider termination of juvenile court jurisdiction, as well as revisions to *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367). These amendments and revisions remove unnecessary statutory language, simplify the rule and forms, and ensure their consistent application of legal requirements.

The committee proposes the following specific amendments to the rules of court and revisions to the Judicial Council forms.

- Amend rule 5.555 to ensure consistency with current law, reduce the unnecessary restatement of statutory language, and promote internal consistency and readability.
- Revise *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) to conform to updated eligibility requirements for Medi-Cal and other benefits, ensure the accuracy of the information and the effectiveness of the assistance provided to nonminors facing termination of juvenile court jurisdiction.
- Revise *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to conform to current law and ensure consistency with the amendments to rule 5.555 and the revisions to form JV-365.

**Alternatives Considered**

The committee considered not revising the forms or amending the rule but elected to proceed with the proposal for the reasons stated above. The committee also considered proposing more extensive amendments intended to promote clarity and consistency, but determined that those amendments would be more appropriate in the context of a proposal with broader scope.

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

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs in courts that continue to distribute printed copies of blank forms.

## Request for Specific Comments

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

- Are there specific changes that would improve the rules and forms in this proposal? (If so, please specify the individual rule or form, and the particular recommended changes.)
- Will requiring the social worker or probation officer to verify, in items 7a and 7e of form JV-365, that he or she has assisted the youth in “completing enrollment” in Medi-Cal and CalFresh place an undue burden on the worker or officer?

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

- Would the proposal provide cost savings? If so please quantify.
- What are the implementation requirements 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?
- Keeping in mind that rule 5.504(c) grants courts one year from their effective date to implement production of new and revised mandatory juvenile forms, would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- Would this proposal affect small courts differently from large courts? If so, please explain.

### Attachments and Links

1. Cal. Rules of Ct., rule 5.555, at pages 6–9
2. Forms JV-365 and JV-367, at pages 10–15

Rule 5.555 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a**  
2 **nonminor—dependents or wards of the juvenile court in a foster care**  
3 **placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451–452,**  
4 **607.2–607.3, 16501.1(f)(g)(16))**

5  
6 (a) \* \* \*

7  
8 (b) **Setting a hearing**

- 9  
10 (1) A court hearing must be placed on the appearance calendar and ~~held~~  
11 completed before ~~prior to terminating~~ juvenile court jurisdiction is  
12 terminated.  
13  
14 (2) The hearing under this rule may be held during any regularly scheduled  
15 review hearing or a hearing required on a petition filed under section ~~366 (g),~~  
16 366.3, 366.31, 727.2, or 727.3 or rule 5.903 388 or section 778.  
17  
18 (3) Notice of the hearing to the parents of a nonminor dependent as defined in  
19 section 11400(v) is not required, unless the parents ~~are~~ is receiving court-  
20 ordered family reunification services or the nonminor is living in the home of  
21 the parent or former legal guardian.  
22  
23 (4) \* \* \*

24  
25 (5) The hearing must be continued for no more than five court days for the  
26 submission of additional information as ordered by the court if the court  
27 determines that the report, the Transitional Independent Living Plan, the  
28 Transitional Independent Living Case Plan (~~TILCP~~) if required, or the 90-day  
29 Transition Plan submitted by the social worker or probation officer does not  
30 provide the information required by (c) and the court is unable to make the  
31 findings and orders required by (d).  
32

33 (c) **Reports**

- 34  
35 (1) ~~In addition to complying with all other statutory and rule requirements~~  
36 ~~applicable to the report prepared by the social worker or probation officer for~~  
37 ~~any hearing during which termination of the court's jurisdiction will be~~  
38 ~~considered, The report prepared by the social worker or probation officer for~~  
39 a hearing under this rule must, in addition to any other elements required by  
40 law, include:  
41  
42 (A)–(C) \* \* \*  
43  
44 (D) Whether the nonminor has applied for title XVI Supplemental Security  
45 Income benefits and, if so, the status of any in-progress that application  
46 pending for title XVI Supplemental Security Income benefits and

1 whether remaining under juvenile court jurisdiction until a final  
2 decision has been issued is in the nonminor's best interests;

3  
4 (E) Whether the nonminor has applied for Special Immigrant Juvenile  
5 status or other immigration relief and, if so, the status of ~~any in-~~  
6 progress that application pending for Special Immigrant Juvenile Status  
7 ~~or other applicable application for legal residency~~ and whether an  
8 active juvenile court case is required for that application;

9  
10 (F)–(H) \* \* \*

11  
12 (I) ~~For a nonminor who is not present for the hearing:~~ If the social worker  
13 or probation officer has reason to believe that the nonminor will not  
14 appear at the hearing, documentation of the basis for that belief,  
15 including:

16  
17 (i) Documentation of the nonminor's statement that he or she ~~did~~  
18 does not wish to appear in court person or by telephone for the  
19 ~~scheduled~~ hearing; or

20  
21 (ii) Documentation of ~~the~~ reasonable efforts ~~made~~ to ~~locate~~ find the  
22 nonminor when his or her ~~current~~ location is unknown;

23  
24 (J)–(K) \* \* \*

25  
26 (2) The social worker or probation officer must file with the report a completed  
27 *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365);

28  
29 (3) The social worker or probation officer must also file with the report the  
30 nonminor's:

31  
32 (A) \* \* \*

33  
34 (B) Most recent Transitional Independent Living Plan (~~TILP~~); and

35  
36 (C) \* \* \*

37  
38 (4) The social worker's or probation officer's report and all documents required  
39 by ~~(e)~~(2)–(3) must be filed with the court at least 10 calendar days before the  
40 hearing, and the social worker or probation officer must provide copies of the  
41 report and other documents to the nonminor, the nonminor's parents, and all  
42 attorneys of record. If the nonminor is under juvenile court jurisdiction as a  
43 nonminor dependent, the social worker or probation officer is not required to  
44 provide copies of the report and other documents to the nonminor  
45 dependent's parents, unless the ~~nonminor dependent's parents are~~ is receiving  
46 court-ordered family reunification services.

1  
2 **(d) Findings and orders**  
3

4 ~~In addition to complying with all other statutory and rule requirements applicable~~  
5 ~~to the hearing, The court must, in addition to any other determinations required by~~  
6 ~~law, make the following judicial findings and orders must be made and included~~  
7 ~~them~~ in the written ~~court~~ documentation of the hearing:  
8

9 (1) *Findings*

10 (A)–(D) \* \* \*

11  
12  
13 (E) Whether the nonminor has an ~~in-progress~~ application pending for title  
14 XVI Supplemental Security Income benefits and, ~~if such an application~~  
15 ~~is pending so, whether it~~ continued juvenile court jurisdiction until a  
16 final decision has been issued to ensure that the nonminor receives  
17 continued assistance with the application process is in the nonminor’s  
18 best interests ~~to continue juvenile court jurisdiction until a final~~  
19 ~~decision has been issued to ensure that the nonminor receives continued~~  
20 ~~assistance with the application process;~~

21  
22 (F) Whether the nonminor has an ~~in-progress~~ application pending for  
23 Special Immigrant Juvenile status or other ~~applicable application for~~  
24 ~~legal residency~~ immigration relief and whether an active juvenile court  
25 case is required for that application;  
26

27 (G)–(L) \* \* \*

28  
29 (M) For a nonminor who ~~is not present~~ does not appear in person or by  
30 telephone for the hearing, whether ~~the reason for his or her failure to~~  
31 ~~appear was:~~

32  
33 (i) The nonminor’s expressed a wish to not to appear in court for the  
34 ~~scheduled~~ hearing; or

35  
36 (ii) The nonminor’s ~~current~~ location remains unknown although and,  
37 if so, whether reasonable efforts were made to locate the  
38 nonminor.  
39

40 (N) \* \* \*

41  
42 (2) *Orders*

43  
44 (A)–(B) \* \* \*  
45

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(C) For a nonminor who does not meet and does not intend to meet the eligibility requirements for nonminor dependent status but who is otherwise eligible to and will remain under juvenile court jurisdiction in a foster care placement, the court must set an appropriate statutory review hearing ~~under section 366.21, 366.22, 366.25, 366.3, 727.2, or 727.3~~ within six months of the date of the nonminor's most recent status review hearing.

(D) \* \* \*

(E) For a nonminor ~~(1)~~ who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction, ~~(2) who does or, alternatively, who meets~~ one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent, ~~or (3) who does meet one or more of the eligibility criteria of section 11403(b) but~~ or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings ~~and orders~~:

(i)-(ii) \* \* \*

(iii) The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and ~~to file a request to~~ have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has attained the age of 21 years;

(iv)-(vi) \* \* \*

(F) \* \* \*

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>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:	
<b>TERMINATION OF JUVENILE COURT JURISDICTION—NONMINOR</b>	CASE NUMBER:

**Directions for the social worker or probation officer:** Check the appropriate boxes in items 1 through 7, complete item 8, attach documents as required, and sign and date item 9.

**Directions for the nonminor (if nonminor is available):** Review the boxes checked by the social worker or probation officer in items 1 through 7. If the box checked in item 1 is wrong, check the correct box and sign your initials next to the box. Sign your initials on the line after items 2a–h, items 3a–j, item 4, items 5a–b, item 6, and items 7a–h if you received the information, document, or service. Then sign and date item 10. You may give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

1.
  - a.  The nonminor wants to attend the termination hearing  in person  by telephone.
  - b.  The nonminor does not want to attend the termination hearing. The petitioner has attached verification that the nonminor has been informed of the potential consequences of failure to attend the termination hearing.
  - c.  The nonminor is unavailable or has refused to sign this form. Documentation of reasonable efforts to locate the nonminor and to obtain his or her signature is attached.
  
2. An attached report verifies that the nonminor has received written information about his or her juvenile court case, including (*check all that apply*):
  - a.  The nonminor's Indian heritage or tribal connections \_\_\_\_\_
  - b.  The nonminor's family history \_\_\_\_\_
  - c.  The nonminor's placement history \_\_\_\_\_
  - d.  The nonminor's educational and medical history \_\_\_\_\_
  - e.  Any photographs of the nonminor or his or her family in the possession of the county welfare department or probation department, other than forensic photographs \_\_\_\_\_
  - f.  Contact information for any siblings under juvenile court jurisdiction, except for those siblings whose safety or welfare would be jeopardized by contact with the nonminor, as determined by the court \_\_\_\_\_
  - g.  The nonminor's right to inspect and receive a copy of his or her juvenile case file without a court order by going to the clerk's office and demonstrating his or her identity using an identification card or other means (see Welf. & Inst. Code, §§ 826.6 and 827 and Cal. Rules of Court, rule 5.552) \_\_\_\_\_
  - h.  The date on which the jurisdiction of the court would be terminated \_\_\_\_\_
  
3. The nonminor has been provided with the following documents (*check all that apply*):
  - a.  A certified copy of his or her birth certificate \_\_\_\_\_
  - b.  A Social Security card \_\_\_\_\_
  - c.  An identification card or driver's license \_\_\_\_\_
  - d.  Proof of his or her citizenship or lawful permanent resident status \_\_\_\_\_
  - e.  A copy of the death certificate of his or her parent or parents \_\_\_\_\_
  - f.  The Health and Education Passport maintained by the county welfare department or probation department \_\_\_\_\_

NONMINOR'S NAME:	CASE NUMBER:
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3. g.  An advance health care directive form \_\_\_\_\_
- h.  A letter prepared by the county welfare or probation department that includes the nonminor's name and date of birth, the dates during which he or she was within the jurisdiction of the juvenile court, and a statement that the nonminor was a foster child in compliance with state and federal financial aid documentation requirements \_\_\_\_\_
- i.  The nonminor's 90-day Transition Plan \_\_\_\_\_
- j.  A blank copy of each of the following: *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO), *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466), and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) \_\_\_\_\_
4.  The nonminor continues to be eligible for services or accommodations under the Individuals With Disabilities Education Act, the Americans With Disabilities Act, or Section 504 of the Rehabilitation Act of 1973, and he or she has been provided with his or her most recent service or accommodation plan. \_\_\_\_\_
5.  The nonminor has been receiving services as provided in the Individuals With Disabilities Education Act (see 34 C.F.R. §§ 300.320(b)–(c), 300.321(b)), and
  - a.  the nonminor has received his or her transition service plan. \_\_\_\_\_
  - b.  the nonminor has been informed of the rights that will transfer to him or her under this act. \_\_\_\_\_
6.  The nonminor was informed that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are, or have been, dependent children in foster care. \_\_\_\_\_
7. The nonminor received the following assistance or services:
  - a.  Completing enrollment in Medi-Cal with no interruption in coverage. \_\_\_\_\_ including
    - i.  Obtaining a Medi-Cal Benefits Identification Card (BIC) \_\_\_\_\_
    - ii.  Obtaining information about eligibility for extended Medi-Cal benefits until age 26 \_\_\_\_\_
  - b.  Applying to college, a vocational training program, or another educational or employment program \_\_\_\_\_
  - c.  Obtaining financial aid for college, a vocational training program, or another educational or employment program \_\_\_\_\_
  - d.  A referral to transitional housing, if available, or assistance in securing other housing \_\_\_\_\_
  - e.  Obtaining employment or other financial support, including completing enrollment in CalFresh \_\_\_\_\_
  - f.  Maintaining relationships with individuals important to him or her, consistent with his or her best interests (*required only if the nonminor has been in an out-of-home placement for six months or longer*) \_\_\_\_\_
  - g.  Accessing the Independent Living Aftercare Program in the nonminor's county of residence \_\_\_\_\_
  - h.  Other services ordered by the court (*specify*): \_\_\_\_\_

8. Number of pages attached:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information and services that I initialed above.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF NONMINOR)

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>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: DEPT: HEARING DATE AND TIME:		
<b>FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR</b>		
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

- |  | Present                  | Attorney (name) | Present                  |
|--|--------------------------|-----------------|--------------------------|
| 1. Parties (name)  |                          |                 |                          |
| a. Nonminor:   | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| b. Probation officer:  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| c. County agency social worker:  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| d. Other (specify):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 2. Parent  |                          |                 |                          |
| a. <input type="checkbox"/> Father <input type="checkbox"/> Mother (name): | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| b. <input type="checkbox"/> Father <input type="checkbox"/> Mother (name): | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 3. Legal guardian (name):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 4. Indian custodian (name):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 5. Tribal representative (name):   | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 6. Others present  |                          |                 |                          |
| a. Other (name):   |                          |                 |                          |
| b. Other (name):   |                          |                 |                          |
| c. Other (name):   |                          |                 |                          |
| 7. <b>The court has read and considered and admits into evidence</b>       |                          |                 |                          |
| a. <input type="checkbox"/> The report of the social worker dated:         |                          |                 |                          |
| b. <input type="checkbox"/> The report of the probation officer dated:     |                          |                 |                          |
| c. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |
| d. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |
| e. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |

NONMINOR'S NAME:

CASE NUMBER:

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS****Findings**

8.  Notice of the date, time, and location of the hearing was given as required by law.
9.  The nonminor is not present in court or participating by telephone and
- a.  The nonminor expressed a wish not to appear for hearing and did not appear.
- b.  The nonminor's current location is unknown. Reasonable efforts  were  were not made to locate him or her.
10.  The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.
11. Remaining under juvenile court jurisdiction  is  is not in the nonminor's best interests. The facts supporting this determination were stated on the record.
12. a.  The nonminor does not now meet any of the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
- b.  The nonminor meets the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
- (1)  The nonminor attends high school or a high school equivalency certificate (GED) program.
- (2)  The nonminor attends a college, a community college, or a vocational education program.
- (3)  The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
- (4)  The nonminor is employed at least 80 hours per month.
- (5)  The nonminor is incapable of doing any of the activities in (1)–(4) due to a medical condition.
13.  The nonminor has an application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process  is  is not in the nonminor's best interests.
14.  The nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief for which an active juvenile court case is required.
15.  The nonminor was informed of the options available to assist with the transition from foster care to independence.
16.  The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.
17.  The nonminor was informed that, if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that the court will maintain general jurisdiction for the purpose of resuming jurisdiction over him or her as a nonminor dependent.
18.  The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition to have the court resume dependency jurisdiction or transition jurisdiction over him or her as a nonminor dependent as long as he or she has not yet reached 21 years of age.
19. a.  The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed Termination of Juvenile Court Jurisdiction—Nonminor (form JV-365). A copy of that form was filed with this court.
- b.  The nonminor cannot be located; despite the department's reasonable efforts were made to locate him or her; and, for that reason, the nonminor was not provided with the information, documents, services, and form specified in item 19a.
20.  The nonminor is subject to delinquency jurisdiction and either was previously a dependent of the court under section 300 or was placed in foster care under section 727. The requirements of Welfare and Institutions Code, § 607.5,  were  were not met.

NONMINOR'S NAME:

CASE NUMBER:

21.  The nonminor is an Indian child under the Indian Child Welfare Act, and he or she  was  was not provided with information regarding the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act as a nonminor dependent.
22. a.  The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.
- b.  The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare to live independently upon leaving foster care.
- c.  The 90-day Transition Plan is a concrete, individualized plan that specifically covers housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

### Orders

23.  The nonminor meets at least one of the conditions listed in item 12(b)(1)–(5) and juvenile court
- a.  **dependency jurisdiction**  **transition jurisdiction over the nonminor as a nonminor dependent is ordered.**
- b. The nonminor's permanent plan is:
- (1)  Independence after a period of placement in supervised settings specified in Welfare and Institutions Code, § 11402.
- (2)  Other (*specify*):
- c.  The nonminor is an Indian child and  has  has not elected to have the Indian Child Welfare Act apply.
- d. The matter is set for further hearing under Welfare and Institutions Code, § 366(f), and California Rules of Court, rule 5.903, on the date set in item 29, which is within six months of the nonminor's most recent status review hearing.
24.  The nonminor does not meet and does not intend to meet the eligibility criteria for status as a nonminor dependent but is otherwise eligible to and will remain under the juvenile court's jurisdiction in a foster care placement, and the matter is set for a status review hearing on the date indicated in item 29, which is within six months of the date of the nonminor's most recent status review hearing.
25.  Reasonable efforts were made to locate the nonminor under the court's jurisdiction as a dependent, ward, or nonminor dependent, and his or her location remains unknown. **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.
26.  The nonminor
- a.  does not meet the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction;
- b.  meets the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; or
- c.  meets the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and

the findings required in items 10, 16, 19a, and 22c of this form were made, and the nonminor was given an endorsed, filed copy of the Termination of Juvenile Court Jurisdiction—Nonminor (form JV-365). Juvenile court jurisdiction over the nonminor is terminated. The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

NONMINOR'S NAME:	CASE NUMBER:
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27.  The nonminor is 21 years of age or older and no longer subject to the jurisdiction of the juvenile court under section 303. The findings required by items 19 and 22c were made. **Juvenile court jurisdiction over the nonminor is dismissed.** The attorney for the nonminor is relieved 60 days from today's date.

28.  **Other findings and orders**

- a. See attachment 28a.
- b. Other (*specify*):

29.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:
---------------	-------	--------	-------

- a.  Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)
- b.  Other (*specify*):

30. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_

JUDICIAL OFFICER



CDSS

WILL LIGHTBOURNE  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

November 3, 2015

Family and Juvenile Law Advisory Committee  
Center for Families, Children and the Courts  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Attention: The Honorable Jerilyn L. Borack  
The Honorable Mark A. Juhas

Dear Judge Borack and Judge Juhas:

The California Department of Social Services has been working with the Department of Health Care Services and stakeholders for the past year to identify ways to improve enrollment of foster youth into programs like Medi-Cal and CalFresh as they transition out of foster care. Studies show that many foster youth are not receiving the benefits they are entitled to upon exiting care.

One proposal that was brought to our attention in these efforts was related to the JV-365 form - the mandatory Judicial Council form used by the courts at the hearing to terminate jurisdiction for a youth who is 18 years of age or older. It appears that this form was last revised in July of 2012, but much has changed since then. For instance, in 2013 section 14005.28 was added to the Welfare and Institutions Code (WIC) eliminating the requirement for youth exiting foster care on or after attaining 18 years-of-age to reapply for Medi-Cal instead of requiring their automatic transfer into the Medi-Cal Program for former foster youth. Our discussions led us to several ideas for changes to the JV-365 that could be very beneficial to helping former foster youth receive the benefits for which they are entitled. We would appreciate an opportunity to speak with the appropriate staff about these ideas and potential benefits these changes could provide.

Potential ideas for discussion include:

1. Although WIC 391 continues to require the social worker to assist with a Medi-Cal application (WIC 391) prior to termination of dependency jurisdiction, the 2014 expansion of Medi-Cal entitles former foster youth to uninterrupted coverage and no application is necessary (WIC 14005.28). Updating Section 7a of the form would conform to this change in law and ensure the youth knows an application is not necessary.

2. Related to Medi-Cal eligibility, the Department notes that the expansion of Medi-Cal extended eligibility for most youth exiting foster care after age 18 to age 26. However, item 7A on the JV-365 references eligibility to age 21. Updating this portion of the form would ensure that youth have the proper information regarding the age extension for Medi-Cal.
3. Additionally, the Department would like to explore the use of the JV-365 as a vehicle the courts can use to ensure that young adults exiting foster care have other documents and information they need for continued connection to programs for which they are entitled. For example, the Department understands that many youth may not have a Benefits Identification Card when dependency is terminated, and youth may be confused about where to go in the county if they have questions about eligibility. Both of these issues become common barriers to receiving prompt Medi-Cal services. Practical topics such as these could be explored in conjunction with reviewing the JV-365.
4. Finally, CalFresh is an important avenue of financial support for former foster youth who may be living on very limited incomes. The Department would like to explore the degree to which the JV-365 can be used to inform and support youth who desire to receive those benefits upon exiting dependency.

I look forward to a productive discussion on these important issues. Feel free to have the appropriate staff contact Steven Fong at [steven.fong@dss.ca.gov](mailto:steven.fong@dss.ca.gov) or (916) 654-1455.

Sincerely,



WILL LIGHTBOURNE  
Director

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Dependency Hearings, Amend rules 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Tracy Kenny, (916) 263-2838, [tracy.kenny@jud.ca.gov](mailto:tracy.kenny@jud.ca.gov); Kerry Doyle (415) 865-8791, [kerry.doyle@jud.ca.gov](mailto:kerry.doyle@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda:

Item 23: Juvenile Dependency Rules

Review hearing rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title

Juvenile Law: Dependency Hearings

Action Requested

Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688

Proposed Effective Date

January 1, 2017

Contact

Tracy Kenny, 916-263-2838

[tracy.kenny@jud.ca.gov](mailto:tracy.kenny@jud.ca.gov)

Kerry Doyle, 415-865-8791

[kerry.doyle@jud.ca.gov](mailto:kerry.doyle@jud.ca.gov)

Proposed by

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

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### Executive Summary and Origin

The rules in Title Five of the California Rules of Court that set forth the procedures to be followed during dependency court hearings from the initiation of the case through each of the status review hearings contain significant repetitions of statutory text that make the rules more cumbersome and require that they be frequently amended when the underlying statutes are amended. This proposal would delete many of these unnecessary sections in the rules or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules while also consolidating some shorter rules where appropriate.

### Background

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far less available to judicial officers than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year due to the time needed for the

*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.*

Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily at no cost. This major change in the information infrastructure for juvenile courts warrants a reexamination of the roles of the rules of court in these proceedings. This proposal was spurred by recent legislation<sup>1</sup> that would have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions, under the council's past practices. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

## **The Proposal**

### **Rule amendments to delete unnecessary statutory text**

This proposal would amend numerous juvenile dependency proceedings rules to delete unnecessary statutory text or, when necessary, replace that text with appropriate references to the underlying code sections. These changes would streamline the rules and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text. The specific rule change proposals are as follows.

#### ***Rule 5.534. General provisions—all proceedings***

Delete subdivisions (a), (b), (c), and (d), which restate provisions of section 350 on the general conduct of the proceedings, testimony of the child in chambers, and the burden of proof. Delete subdivision (o) on periodic reports, which restates Welfare and Institutions Code section<sup>2</sup> 365. Delete subdivision (p) on the presence of the child, which restates section 349. (Making this change obviates the need to amend this rule to incorporate the changes made by Assembly Bill 217 (Maienschein).)

#### ***Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)***

Amend subdivision (b) to delete the specific parentage questions that are drawn from the text of section 316.2 and replace with a reference to that section.

#### ***Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation***

Delete subdivisions (b), (c), (d), and (f), which restate provisions found in sections 311, 313, 309(b), 315, and 334 respectively and include a reference to section 309(b) in former subdivision (e).

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<sup>1</sup> Assem. Bill 217 [Maienschein]; Stats. 2015, ch. 36; Sen. Bill 68 [Liu]; Stats. 2015, ch. 284; and Sen. Bill 794 [Human Services]; Stats. 2015, ch. 425.

<sup>2</sup> Hereafter, all code references are to the Welfare and Institutions Code unless otherwise noted.

***Rule 5.674. Conduct of hearing; admission, no contest, submission***

Delete subdivision (c), which restates section 319 and remove reference to this subdivision in subdivision (d), and replace with a reference to section 319.

***Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission***

Delete subdivision (a), which restates section 353. Delete reference to rule 5.686, which is proposed to be repealed.

***Rule 5.684. Contested hearing on petition***

Delete hearsay exceptions from subdivision (d) and replace with a reference to section 355(c). Amend to add provisions on the continuance pending a disposition hearing from rule 5.686 to subdivision (g), which currently directs the court to proceed to a disposition hearing and delete the reference to rule 5.686.

***Rule 5.690. General conduct of disposition hearing***

Delete most of the text of subdivision (c) concerning the case plan requirements (some of which are in the rule, but many of which are not) and instead specify that a case plan must be prepared and included with the court report as required in section 16501.1.

***Rule 5.695. Findings and orders of the court—disposition***

Delete subdivision (b) concerning appointment of a legal guardian as a disposition, which repeats provisions of section 360 and add clerk requirements to subdivision (a). Delete specific required removal findings from subdivision (d) and replace with a reference to subdivision (c) of section 361, which sets forth these findings. Delete extensive text sections drawn from section 361.5 contained in subdivision (h) of the rule and replace with appropriate code references. Delete subdivision (j) as it is inconsistent with section 366.21(e) and restates timing for status reviews contained in various sections.

***Rule 5.706. Family maintenance review hearings (§ 364)***

Delete subdivisions (a), (c), and (e), which restate provisions of section 364 on family maintenance cases and retain those provisions of the rule that are not simply a statutory restatement.

***Rule 5.708. General review hearing requirements***

Delete subdivision (a) on the timing for review hearings, which restates section 366. Delete subdivision (d) on required detriment findings, which restates sections 366.21(e), 366.22(a), and 366.25(a). Delete subparagraph (2) of subdivision (e) concerning factors that are not sufficient to constitute a failure of reasonable services, which restates sections 366.21(l) and 366.25(a)(3). Delete subdivision (h) on out-of-state placement requirements, which restates provisions of section 366.21. Delete subdivision (i), which restates required findings contained in section 366. Delete subdivision (m) and paragraphs (1)–(4) of subdivision (n), which restate the findings

required before a section 366.26 hearing may be set as provided in sections 366.21, 366.22, and 366.25.

***Rule 5.710. Six-month review hearing***

Delete subdivision (a), which repeats the required statutory timeframe in sections 364, 366, and 366.21. Delete required finding language in paragraph (1) of subdivision (b). Redraft subdivision (c) and delete subdivision (d) on siblings to delete language that restates section 366.21(e) requirements. (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by Senate Bill 68 (Liu).)

***Rule 5.715. Twelve-month permanency hearing***

Delete notice requirements from subdivision (a) that restate statutory requirements in section 293. Redraft subdivision (b) to delete provisions that restate section 366.21(f). (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by SB 68 (Liu).)

***Rule 5.720. Eighteen-month permanency hearing***

Delete subdivision (a), which states the timing for this hearing as required in section 366.22 and the notice requirements of section 293. Redraft subdivision (b) on the findings and orders required to delete restatements of section 366.22. (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by SB 68 (Liu).)

***Rule 5.722. Twenty-four-month subsequent permanency review***

Delete subdivision (a), which restates timing requirements for hearings contained in section 366.25 and an out-of-date notice provision. Redraft subdivision (b) to delete provisions that simply restate section 366.25.

***Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)***

Delete paragraph (1) from subdivision (a), which restates section 366.26(a). Amend paragraph (3) of subdivision (a) to add a missing reference to section 727.31. Redraft subdivisions (d) and (e) to delete language that is duplicative of section 366.26.

***Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))***

Redraft subdivisions (b) and (c) to delete content that restates section 366.26(n), and redraft subdivision (e) to change a reference to this rule to a reference to section 366.26(n)(1).

***Rule 5.727. Proposed removal (§ 366.26(n))***

Replace a reference to rule 5.726 with a reference to section 366.26(n)(1) in paragraph (2) of subdivision (b).

***Rule 5.728. Emergency removal (§ 366.26(n))***

Replace a reference to rule 5.726 with a reference to section 366.26(n)(1) in paragraph (2) of subdivision (b).

***Rule 5.735. Legal guardianship***

Amend subdivision (b) to accurately reflect the standard for granting visitation in guardianship matters.

***Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)***

Delete paragraphs (8), (9), and (10) from subdivision (b) as they restate provisions of section 366.3.

**Other changes to enhance brevity of rules**

***Rule 5.674. Conduct of hearing; admission, no contest, submission***

Add two new subdivisions from provisions of rule 5.680 that specifically address the procedures to be followed for detention hearings.

***Rule 5.680. Detention rehearings; prima facie hearings***

Repeal this rule and move its key provisions into rule 5.674.

***Rule 5.686. Continuance pending disposition hearing***

Repeal this rule and add its substance to rule 5.684.

***Rule 5.688. Failure to cooperate with services***

Repeal this rule as it simply restates provisions of section 360(b).

**Relative placement**

Legislation enacted last year<sup>3</sup> amended Family Code section 7950, to require the court to make a finding that the county child welfare agency has made diligent efforts to locate an appropriate relative, and that each relative whose name has been submitted to the agency or entity as a possible caregiver has been evaluated as an appropriate placement resources:

- at any permanency hearing in which the court terminates reunification services, or
- at any postpermanency hearing for a child not placed for adoption.

Before this amendment, the court was required to make this finding only before a child was placed in long-term foster care. Because this is such an important change in the law to help ensure both relative placement and permanency for children, and because it is in a code not often reviewed by juvenile court judges and attorneys, the committee proposes adding these new requirements to the rules governing permanency and postpermanency hearings.<sup>4</sup>

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<sup>3</sup> Sen. Bill 794 [Human Services]; Stats. 2015, ch. 425

<sup>4</sup> Cal. Rules of Court, rules 5.715, 5.720, 5.722, and 5.740.

***Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (form JV-421)***

Form JV-421 misstates the law. Item 33a provides the option for the court to record that it has informed all parties that, for a child under the age of three, failure to participate and make substantive progress in court-ordered treatment programs may result in the termination of reunification services at the hearing scheduled within six months from the date the child entered foster care under section 366.21(e). This language, however, does not track the requirement in section 366.21(e) that the hearing should be scheduled on a date within six months of the date of the dispositional hearing, but no later than twelve months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier. The form is therefore legally inaccurate and the committee proposes amending it to accurately reflect the law.

Similarly, rule 5.695(j) also misstates how the six-month hearing date should be calculated. Rather than amend the rule, however, the committee proposes deleting that subdivision since it is unnecessary and simply restates the statute.

**Alternatives Considered**

Initially the committee considered simply amending the existing rules of court to reflect the new statutory language, but determined that it would be preferable in the long run to abbreviate the rules by replacing unneeded text with code references in order to obviate the need for further amendments in the future when these statutes are again amended.

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

Because this proposal chiefly amends rules of court to make them more concise without changing the underlying statutory requirements, it should have no costs to the courts and the main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute.

In implementing the changes to form JV-421, courts that use this optional form will incur standard reproductive costs.

## 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?
- Are there statutory provisions that were deleted that should be restored?
- Are there additional statutory provisions that should be deleted?

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. Proposed Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.680, 5.682, 5.684, 5.686, 5.688, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, and 5.740 attached at pages 8–85.<sup>5</sup>
2. Form JV-421 is attached at pages 86–92.
3. Assembly Bill 217  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB217](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB217)
4. Senate Bill 68  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB68](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB68)
5. Senate Bill 794  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB794](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB794)

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<sup>5</sup> The Judicial Council took action on April 15 to amend rules 5.534 and 5.708 effective July 1, 2016 to implement changes required by Assembly Bill 879 (Stats. 2015, ch. 219). Because those changes are not yet effective, the versions here do not reflect those changes, but they will be incorporated after July 1 if the proposal moves forward.

Rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, and 5.740 of the California Rules of Court would be amended, and rules 5.680, 5.686, and 5.688 would be repealed, effective January 1, 2017, to read:

1 **Rule 5.534. General provisions—all proceedings**

2  
3 **(a) — Control of proceedings (§§ 350, 680)**

4  
5 The court must control all proceedings with a view to quickly and effectively  
6 ascertaining the jurisdictional facts and all information relevant to the present  
7 condition and welfare of the child.

8  
9  
10 **(b) — Conduct of proceedings (§§ 350, 680)**

11  
12 Unless there is a contested issue of fact or law, the proceedings must be conducted  
13 in a nonadversarial atmosphere.

14  
15  
16 **(c) — Testimony of child in chambers (§ 350)**

17  
18 In a hearing under section 300 et seq., a child may testify in chambers and outside  
19 the presence of the child's parent or guardian if the parent or guardian is  
20 represented by counsel who is present, subject to the right of the parent or guardian  
21 to have the court reporter read back the child's testimony, and if the court  
22 determines, based on the petitioner's report or other offers of proof or other  
23 evidence, that any of the following circumstances exist:

24  
25 (1) — Testimony in chambers is necessary to ensure truthful testimony;

26  
27 (2) — The child is likely to be intimidated by a formal courtroom setting; or

28  
29 (3) — The child is afraid to testify in front of the parent or guardian.

30  
31  
32 **(d) — Burden of proof (§§ 350, 701.1)**

33  
34 Meeting the burden of proof:

35  
36 (1) — In any hearing under section 300 in which the county welfare agency has the  
37 burden of proof, the court may consider whether the burden of proof has been  
38 met only after completion of the agency's case and the presentation of any  
39 material evidence offered by the child. The court may then, on motion of any  
40 party or on the court's own motion, order whatever action the law requires if

1 the court, based on all the evidence then before it, finds that the burden of  
2 proof has not been met.

3  
4 ~~(2) In any hearing under section 601 or 602, after the completion of the~~  
5 ~~petitioner's case, the court may, on the motion of any party or on the court's~~  
6 ~~own motion, order whatever action the law requires if the court, based on all~~  
7 ~~the evidence then before it, finds that the burden of proof has not been met.~~  
8

9 **(e)(a) De facto parents**

10  
11 On a sufficient showing, the court may recognize the child's present or previous  
12 custodian as a de facto parent and grant him or her standing to participate as a party  
13 in the dispositional hearing and any hearing thereafter at which the status of the  
14 dependent child is at issue. The de facto parent may:

- 15  
16 (1) Be present at the hearing;  
17  
18 (2) Be represented by retained counsel or, at the discretion of the court, by  
19 appointed counsel; and  
20  
21 (3) Present evidence.  
22

23 **(f)(b) Relatives**

- 24  
25 (1) On a sufficient showing, the court may permit a relative of the child or youth  
26 to:  
27  
28 (A) Be present at the hearing; and  
29  
30 (B) Address the court.  
31  
32 (2) A relative of the child has the right to submit information about the child to  
33 the court at any time. Written information about the child may be submitted  
34 to the court using *Relative Information* (form JV-285) or in a letter to the  
35 court.  
36  
37 (3) When a relative is located through the investigation required by rule 5.637,  
38 the social worker or probation officer must give that relative:  
39  
40 (A) The written notice required by section 309 or 628 and the "Important  
41 Information for Relatives" document as distributed in California  
42 Department of Social Services All County Letter No. 09-86;  
43

1 (B) A copy of *Relative Information* (form JV-285), with the county and  
2 address of the court, the child's name and date of birth, and the case  
3 number already entered in the appropriate caption boxes by the social  
4 worker; and

5  
6 (C) A copy of *Confidential Information* (form JV-287).

7  
8 (4) When form JV-285 or a relative's letter is received by the court, the clerk  
9 must provide the social worker or probation officer, all self-represented  
10 parties, and all attorneys with a copy of the completed form or letter.

11  
12 (5) When form JV-287 is received by the court, the clerk must place it in a  
13 confidential portion of the case file.

14  
15 **(g)(c) Right to counsel (§§ 317, 633, 634, 700)**

16  
17 At each hearing, the court must advise any self-represented child, parent, or  
18 guardian of the right to be represented by counsel and, if applicable, of the right to  
19 have counsel appointed, subject to a claim by the court or the county for  
20 reimbursement as provided by law.

21  
22 **(h)(d) Appointment of counsel (§§ 317, 353, 633, 634, 700)**

23  
24 (1) In cases petitioned under section 300:

25  
26 (A) The court must appoint counsel for the child unless the court finds that  
27 the child would not benefit from the appointment and makes the  
28 findings required by rule 5.660(b); and

29  
30 (B) The court must appoint counsel for any parent or guardian unable to  
31 afford counsel if the child is placed in out-of-home care or the  
32 recommendation of the petitioner is for out-of-home care, unless the  
33 court finds the parent or guardian has knowingly and intelligently  
34 waived the right to counsel.

35  
36 (2) In cases petitioned under section 601 or 602:

37  
38 (A) The court must appoint counsel for any child who appears without  
39 counsel, unless the child knowingly and intelligently waives the right to  
40 counsel. If the court determines that the parent or guardian can afford  
41 counsel but has not retained counsel for the child, the court must  
42 appoint counsel for the child and order the parent or guardian to  
43 reimburse the county;

- 1 (B) The court may appoint counsel for a parent or guardian who desires but  
2 cannot afford counsel; and  
3  
4 (C) If the parent has retained counsel for the child and a conflict arises, the  
5 court must take steps to ensure that the child’s interests are protected.  
6

7 **(d)(e) Tribal representatives (25 U.S.C. §§ 1911, 1931–1934)**  
8

9 The tribe of an Indian child is entitled to intervene as a party at any stage of a  
10 dependency proceeding concerning the Indian child.  
11

12 (1) The tribe may appear by counsel or by a representative of the tribe designated  
13 by the tribe to intervene on its behalf. When the tribe appears as a party by a  
14 representative of the tribe, the name of the representative and a statement of  
15 authorization for that individual or agency to appear as the tribe must be  
16 submitted to the court in the form of a tribal resolution or other document  
17 evidencing an official act of the tribe.  
18

19 (2) If the tribe of the Indian child does not intervene as a party, the court may  
20 permit an individual affiliated with the tribe or, if requested by the tribe, a  
21 representative of a program operated by another tribe or Indian organization  
22 to:  
23

- 24 (A) Be present at the hearing;  
25  
26 (B) Address the court;  
27  
28 (C) Receive notice of hearings;  
29  
30 (D) Examine all court documents relating to the dependency case;  
31  
32 (E) Submit written reports and recommendations to the court; and  
33  
34 (F) Perform other duties and responsibilities as requested or approved by  
35 the court.  
36

37 **(d)(f) Appointment of educational rights holder (§§ 319, 361, 366, 366.27, 726, 727.2;  
38 Gov. Code, §§ 7579.5–7579.6)**  
39

40 (1) If the court limits, even temporarily, the rights of a parent or guardian to  
41 make educational or developmental-services decisions for a child under rule  
42 5.649, the court must immediately proceed under rule 5.650 to appoint a  
43 responsible adult as educational rights holder for the child.

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(2) If a nonminor or nonminor dependent youth chooses not to make educational or developmental-services decisions for him- or herself or is deemed by the court to be incompetent, and the court also finds that the appointment of an educational rights holder would be in the best interests of the youth, then the court must immediately proceed under rule 5.650 to appoint or continue the appointment of a responsible adult as educational rights holder for the youth.

**~~(k)~~(g) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)**

- (1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:
  - (A) Any right to assert the privilege against self-incrimination;
  - (B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing;
  - (C) The right to use the process of the court to bring in witnesses; and
  - (D) The right to present evidence to the court.
- (2) The child, parent, guardian, and their attorneys have:
  - (A) The right to receive probation officer or social worker reports; and
  - (B) The right to inspect the documents used by the preparer of the report.
- (3) Unless prohibited by court order, the child, parent, guardian, and their attorneys also have the right to receive all documents filed with the court.

**~~(l)~~(h) Notice**

At each hearing under section 300 et seq., the court must determine whether notice has been given as required by law and must make an appropriate finding noted in the minutes.

**~~(m)~~(i) Address of parent or guardian—notice (§ 316.1)**

At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court must order each parent or guardian to provide a mailing address.

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- (1) The court must advise that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.
- (2) The court must advise that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.
- (3) *Notification of Mailing Address* (form JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.
  - (A) The form must be delivered to the parent or guardian, or both, with the petition.
  - (B) The form must be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.
  - (C) The form must be printed and made available in both English and Spanish.

**~~(n)~~(j) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)**

For cases filed under section 300 et seq.:

- (1) For any child who has been removed from the home, the court must ensure that notice of statutory review hearings, permanency hearings, and section 366.26 hearings has been provided to the current caregiver of the child, including foster parents, preadoptive parents, relative caregivers, and nonrelative extended family members. Notice of dispositional hearings also must be provided to these individuals when the dispositional hearing is serving as a permanency hearing under section 361.5(f).
- (2) The current caregiver has the right to be heard in each proceeding listed in paragraph (1), including the right to submit information about the child to the court before the hearing. Written information about the child may be submitted to the court using the *Caregiver Information Form* (form JV-290) or in the form of a letter to the court.

- 1 (3) At least 10 calendar days before each hearing listed in paragraph (1), the  
2 social worker must provide to the current caregiver:  
3
  - 4 (A) A summary of his or her recommendations for disposition, and any  
5 recommendations for change in custody or status;
  - 6
  - 7 (B) *Caregiver Information Form* (form JV-290); and
  - 8
  - 9 (C) *Instruction Sheet for Caregiver Information Form* (form JV-290-  
10 INFO).
  - 11
- 12 (4) If the caregiver chooses to provide written information to the court using  
13 form JV-290 or by letter, the caregiver must follow the procedures set forth  
14 below. The court may waive any element of this process for good cause.  
15
  - 16 (A) If filing in person, the caregiver must bring the original document and 8  
17 copies to the court clerk’s office for filing no later than five calendar  
18 days before the hearing.
  - 19
  - 20 (B) If filing by mail, the caregiver must mail the original document and 8  
21 copies to the court clerk’s office for filing no later than seven calendar  
22 days before the hearing.
  - 23
- 24 (5) When form JV-290 or a caregiver letter is received by mail the court clerk  
25 must immediately file it.
- 26
- 27 (6) When form JV-290 or a caregiver letter is filed, the court clerk must provide  
28 the social worker, all unrepresented parties and all attorneys with a copy of  
29 the completed form or letter immediately upon receipt. The clerk also must  
30 complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The  
31 clerk may use any technology designed to speed the distribution process,  
32 including drop boxes in the courthouse, e-mail or fax to distribute the JV-290  
33 form or letter and proof of service form.

34  
35  
36 ~~(o) — Periodic reports (§ 365)~~

37  
38 ~~The court may require the petitioner or any other agency to submit reports~~  
39 ~~concerning a child or youth subject to the jurisdiction of the court.~~

40  
41  
42 ~~(p) — Presence of child (§ 349)~~

1 ~~(1) A child who is the subject of a juvenile court hearing is entitled to be present~~  
2 ~~at the hearing. If the child is present at the hearing, the court must allow the~~  
3 ~~child, if the child so desires, to address the court and participate in the~~  
4 ~~hearing.~~

5  
6 ~~(2) If the child is 10 years of age or older and he or she is not present at the~~  
7 ~~hearing, the court must determine whether the child was properly notified of~~  
8 ~~his or her right to attend the hearing and ask why the child is not present at~~  
9 ~~the hearing and whether the child was given an opportunity to attend. If the~~  
10 ~~court finds that the child was not properly notified or that the child wished to~~  
11 ~~be present and was not given an opportunity to be present, the court must~~  
12 ~~continue the hearing to allow the child to attend unless the court finds that it~~  
13 ~~is in the best interest of the child not to continue the hearing. Any such~~  
14 ~~continuance must be only for that period of time necessary to provide notice~~  
15 ~~and secure the presence of the child. The court may issue any and all orders~~  
16 ~~reasonably necessary to ensure that the child has an opportunity to attend.~~

#### 17 18 **Advisory Committee Comment**

19  
20 Because the intent of subdivision ~~(h)~~ (j) is to expand access to the courts for caregivers of  
21 children in out-of-home care, the rule should be liberally construed. To promote caregiver  
22 participation and input, judicial officers are encouraged to permit caregivers to orally address the  
23 court when caregivers would like to share information about the child. In addition, court clerks  
24 should allow filings by caregivers even if the caregiver has not strictly adhered to the  
25 requirements in the rule regarding number of copies and filing deadlines.

#### 26 27 **Rule 5.667 \* \* \***

#### 28 29 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**

#### 30 31 **(a) Commencement of hearing**

32  
33 At the beginning of the initial hearing on the petition, whether the child is detained  
34 or not detained, the court must give advisement as required by rule 5.534 and must  
35 inform each parent and guardian present, and the child, if present:

- 36  
37 (1) Of the contents of the petition;  
38  
39 (2) Of the nature of, and possible consequences of, juvenile court proceedings;  
40  
41 (3) If the child has been taken into custody, of the reasons for the initial detention  
42 and the purpose and scope of the detention hearing; and  
43

1 (4) If the petition is sustained and the child is declared a dependent of the court  
2 and removed from the custody of the parent or guardian, the court-ordered  
3 reunification services must be considered to have been offered or provided on  
4 the date the petition is sustained or 60 days after the child's initial removal,  
5 whichever is earlier. The time for services must not exceed 12 months for a  
6 child aged three or over at the time of the initial removal and must not exceed  
7 6 months for a child who was under the age of three at the time of the initial  
8 removal if the parent or guardian fails to participate regularly and make  
9 substantive progress in any court-ordered treatment program.

10  
11 **(b) Parentage inquiry**

12  
13 The court must also inquire of the child's mother and of any other appropriate  
14 person present as to the identity and address of any and all presumed or alleged  
15 parents of the child as set forth in section 316.2. ~~Questions, at the discretion of the~~  
16 ~~court, may include:~~

17  
18 ~~(1) Has there been a judgment of parentage?~~

19  
20 ~~(2) Was the mother married, or did she believe she was married, at or any time~~  
21 ~~after the time of conception?~~

22  
23 ~~(3) Was the mother cohabiting at the time of conception?~~

24  
25 ~~(4) Has the mother received support payments or promises of support for the~~  
26 ~~child or for the mother during her pregnancy?~~

27  
28 ~~(5) Has anyone formally or informally acknowledged parentage, including~~  
29 ~~through the execution of a voluntary declaration under Family Code section~~  
30 ~~7571?~~

31  
32 ~~(6) Have tests to determine biological parentage been administered and, if so,~~  
33 ~~what were the results?~~

34  
35 **(c) Health and education information (§ 16010)**

36  
37 The court must order each parent and guardian present either to complete *Your*  
38 *Child's Health and Education* (form JV-225) or to provide the information  
39 necessary for the social worker or probation officer, court staff, or representative of  
40 the local child welfare agency to complete the form. The social worker or probation  
41 officer assigned to the dependency matter must provide the child's attorney with a  
42 copy of the completed form. Before each periodic status review hearing, the social

1 worker or probation officer must obtain and include in the reports prepared for the  
2 hearing all information necessary to maintain the accuracy of form JV-225.

3  
4 **Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting**  
5 **jurisdiction hearing; visitation**

6  
7 **(a) Child not detained; filing petition, setting hearing**

8  
9 If the social worker does not take the child into custody but determines that a  
10 petition concerning the child should be filed, the social worker must file a petition  
11 with the clerk of the juvenile court as soon as possible. The clerk must set an initial  
12 hearing on the petition within 15 court days.

13  
14 ~~**(b) Time limit on custody, filing petition, setting hearing (§§ 311, 313)**~~

15  
16 ~~If the social worker takes the child into custody, the social worker must~~  
17 ~~immediately file a petition with the clerk of the juvenile court, and the clerk must~~  
18 ~~immediately set the matter for hearing on the detention hearing calendar. A child~~  
19 ~~who is detained must be released within 48 hours, excluding noncourt days, unless~~  
20 ~~a petition has been filed.~~

21  
22 ~~**(c) Detention—child in medical facility (§ 309(b))**~~

23  
24 ~~For purposes of these rules, a child is deemed taken into custody and delivered to~~  
25 ~~the social worker if the child is under medical care and cannot immediately be~~  
26 ~~moved and there is reasonable cause to believe the child is described by section~~  
27 ~~300.~~

28  
29 ~~**(d) Detention hearing—time of (§ 315)**~~

30  
31 ~~Unless the child has been released sooner, the matter concerning a child who is~~  
32 ~~taken into custody must be brought before the juvenile court for a detention hearing~~  
33 ~~as soon as possible, but in any event before the end of the next court day after a~~  
34 ~~petition has been filed. At the detention hearing, the court must determine whether~~  
35 ~~the child is to continue to be detained in custody. If the detention hearing is not~~  
36 ~~commenced within that time, the child must be immediately released from custody.~~

37  
38 ~~**(e)(b) Detention hearing—warrant cases, transfers in, changes in placement**~~

39  
40 ~~Notwithstanding (e) section 309(b), and unless the child has been released sooner, a~~  
41 ~~detention hearing must be held as soon as possible, but no later than 48 hours,~~  
42 ~~excluding noncourt days, after the child arrives at a facility within the county if:~~  
43

- 1 (1) The child was taken into custody in another county and transported in  
2 custody to the requesting county under a protective custody warrant issued by  
3 the juvenile court;  
4  
5 (2) The child was taken into custody in the county in which a protective custody  
6 warrant was issued by the juvenile court; or  
7  
8 (3) The matter was transferred from the juvenile court of another county under  
9 rule 5.610 and the child was ordered transported in custody.  
10

11 At the hearing the court must determine whether the child is to continue to be  
12 detained in custody. If the hearing is not commenced within that time, the child  
13 must be immediately released from custody.  
14

15 ~~(f)~~ **Setting jurisdiction hearing (§ 334)**  
16

17 ~~If the child is not detained, the court must set a jurisdiction hearing to be held~~  
18 ~~within 30 days of the date the petition is filed. If the court orders the child to be~~  
19 ~~detained, the court must set a jurisdiction hearing within 15 court days of the order~~  
20 ~~of detention.~~  
21

22 ~~(g)~~**(c) Visitation**  
23

- 24 (1) The court must consider the issue of visitation between the child and other  
25 persons, determine if contact pending the jurisdiction hearing would be  
26 beneficial or detrimental to the child, and make appropriate orders.  
27  
28 (2) The court must consider the issue of visitation between the child and any  
29 sibling who was not placed with the child, and who was taken into custody  
30 with the child or is otherwise under the court's jurisdiction, and enter an  
31 order for sibling visitation pending the jurisdiction hearing, unless the court  
32 finds by clear and convincing evidence that sibling interaction between the  
33 child and the sibling is contrary to the safety or well-being of either child.  
34  
35

36 **Rule 5.674. Conduct of hearing; admission, no contest, submission**  
37

38 **(a) Admission, no contest, submission**  
39

- 40 (1) At the initial hearing, whether or not the child is detained, the parent or  
41 guardian may admit the allegations of the petition, plead no contest, or  
42 submit the jurisdictional determination to the court based on the information  
43 provided to the court and waive further jurisdictional hearing.

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(2) If the court accepts an admission, a plea of no contest, or a submission from each parent and guardian with standing to participate as a party, the court must then proceed according to rules 5.682 and 5.686.

**(b) Detention hearing; general conduct (§ 319; 42 U.S.C., § 600 et seq.)**

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

- (A) Continuance in the home is contrary to the child's welfare;
- (B) Temporary placement and care are vested with the social services agency;
- (C) Reasonable efforts have been made to prevent removal; and
- (D) The findings and orders required to be made on the record under section 319.

~~(e)~~ **Detention hearing; examination by court (§ 319)**

~~Subject to (d), the court must examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention and must receive any relevant evidence that the petitioner, the child, a parent, a guardian, or counsel for a party wishes to present.~~

~~(d)~~**(c) Detention hearing; rights of child, parent, or guardian (§§ 311, 319)**

At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

- (1) The preparer of a police report, probation or social worker report, or other document submitted to the court; and
- (2) Any person examined by the court under ~~(e)~~ section 319. If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

1 **(d) No parent or guardian present and not noticed (§ 321)**

2  
3 If the court orders the child detained at the detention hearing and no parent or  
4 guardian is present and no parent or guardian has received actual notice of the  
5 detention hearing, a parent or guardian may file an affidavit alleging the failure of  
6 notice and requesting a detention rehearing. The clerk must set the rehearing for a  
7 time within 24 hours of the filing of the affidavit, excluding noncourt days. At the  
8 rehearing the court must proceed under rules 5.670–5.678. [This was in 5.680  
9 which I am proposing to eliminate].

10  
11 **(e) Hearing for further evidence; prima facie case (§ 321)**

12  
13 If the court orders the child detained, and the child, a parent, a guardian, or counsel  
14 requests that evidence of the prima facie case be presented, the court must set a  
15 prima facie hearing for a time within 3 court days to consider evidence of the prima  
16 facie case or set the matter for jurisdiction hearing within 10 court days. If at the  
17 hearing the petitioner fails to establish the prima facie case, the child must be  
18 released from custody. [This was in 5.680 which I am proposing to eliminate].

19  
20 **Rule 5.676 \* \* \***

21  
22 **Rule 5.678 \* \* \***

23  
24 **~~Rule 5.680. Detention rehearings; prima facie hearings~~**

25  
26 **~~(a) — No parent or guardian present and not noticed (§ 321)~~**

27  
28 ~~If the court orders the child detained at the detention hearing and no parent or~~  
29 ~~guardian is present and no parent or guardian has received actual notice of the~~  
30 ~~detention hearing, a parent or guardian may file an affidavit alleging the failure of~~  
31 ~~notice and requesting a detention rehearing. The clerk must set the rehearing for a~~  
32 ~~time within 24 hours of the filing of the affidavit, excluding noncourt days. At the~~  
33 ~~rehearing the court must proceed under rules 5.670–5.678.~~

34  
35 **~~(b) — Parent or guardian noticed, not present (§ 321)~~**

36  
37 ~~If the court determines that the parent or guardian received adequate notice of the~~  
38 ~~detention hearing, and the parent or guardian fails to appear at the hearing, the~~  
39 ~~request of the parent or guardian for a detention rehearing must be denied absent a~~  
40 ~~finding that the failure to appear at the hearing was due to good cause.~~

41  
42 **~~(c) — Parent or guardian present; preparers available (§ 321)~~**

1 If a parent or guardian has received notice of the detention hearing, is present at the  
2 hearing, and the preparers of any reports or other documents relied on by the court  
3 in its order detaining the child are present in court or otherwise available for cross-  
4 examination, the request for a detention rehearing must be denied.

5  
6 ~~(d) — Hearing for further evidence; prima facie case (§ 321)~~

7  
8 If the court orders the child detained, and the child, a parent, a guardian, or counsel  
9 requests that evidence of the prima facie case be presented, the court must set a  
10 prima facie hearing for a time within 3 court days to consider evidence of the prima  
11 facie case or set the matter for jurisdiction hearing within 10 court days. If at the  
12 hearing petitioner fails to establish the prima facie case, the child must be released  
13 from custody.

14  
15 **Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights;**  
16 **admission, no contest, submission**

17  
18 ~~(a) — Petition read and explained (§ 353)~~

19  
20 At the beginning of the jurisdiction hearing, the petition must be read to those  
21 present. On request of the child or the parent, guardian, or adult relative, the court  
22 must explain the meaning and contents of the petition and the nature of the hearing,  
23 its procedures, and the possible consequences.

24  
25 ~~(b)~~(a) **Rights explained (§§ 341, 353, 361.1)**

26  
27 After giving the advisement required by rule 5.534, the court must advise the parent  
28 or guardian of the following rights:

- 29
- 30 (1) The right to a hearing by the court on the issues raised by the petition;
  - 31
  - 32 (2) The right to assert any privilege against self-incrimination;
  - 33
  - 34 (3) The right to confront and to cross-examine all witnesses called to testify;
  - 35
  - 36 (4) The right to use the process of the court to compel attendance of witnesses on  
37 behalf of the parent or guardian; and
  - 38
  - 39 (5) The right, if the child has been removed, to have the child returned to the  
40 parent or guardian within two working days after a finding by the court that  
41 the child does not come within the jurisdiction of the juvenile court under  
42 section 300, unless the parent or guardian and the child welfare agency agree  
43 that the child will be released on a later date.

1  
2 **(e)(b) Admission of allegations; prerequisites to acceptance**

3  
4 The court must then inquire whether the parent or guardian intends to admit or  
5 deny the allegations of the petition. If the parent or guardian neither admits nor  
6 denies the allegations, the court must state on the record that the parent or guardian  
7 does not admit the allegations. If the parent or guardian wishes to admit the  
8 allegations, the court must first find and state on the record that it is satisfied that  
9 the parent or guardian understands the nature of the allegations and the direct  
10 consequences of the admission, and understands and waives the rights in (b).

11  
12 **(d)(c) Parent or guardian must admit**

13  
14 An admission by the parent or guardian must be made personally by the parent or  
15 guardian.

16  
17 **(e)(d) Admission, no contest, submission**

18  
19 The parent or guardian may elect to admit the allegations of the petition, plead no  
20 contest, or submit the jurisdictional determination to the court based on the  
21 information provided to the court and waive further jurisdictional hearing. *Waiver*  
22 *of Rights—Juvenile Dependency* (form JV-190) may be completed by the parent or  
23 guardian and counsel and submitted to the court.

24  
25 **(f)(e) Findings of court (§ 356)**

26  
27 After admission, plea of no contest, or submission, the court must make the  
28 following findings noted in the order of the court:

- 29  
30 (1) Notice has been given as required by law;  
31  
32 (2) The birthdate and county of residence of the child;  
33  
34 (3) The parent or guardian has knowingly and intelligently waived the right to a  
35 trial on the issues by the court, the right to assert the privilege against self-  
36 incrimination, and the right to confront and to cross-examine adverse  
37 witnesses and to use the process of the court to compel the attendance of  
38 witnesses on the parent or guardian's behalf;  
39  
40 (4) The parent or guardian understands the nature of the conduct alleged in the  
41 petition and the possible consequences of an admission, plea of no contest, or  
42 submission;  
43

- 1 (5) The admission, plea of no contest, or submission by the parent or guardian is  
2 freely and voluntarily made;  
3  
4 (6) There is a factual basis for the parent or guardian's admission;  
5  
6 (7) Those allegations of the petition as admitted are true as alleged; and  
7  
8 (8) The child is described under one or more specific subdivisions of section 300.  
9

10 **(g)(f) Disposition**

11  
12 After accepting an admission, plea of no contest, or submission, the court must  
13 proceed to a disposition hearing under rules ~~5.686~~ and 5.690.  
14

15 **Rule 5.684. Contested hearing on petition**

16  
17 **(a) Contested jurisdiction hearing (§ 355)**

18  
19 If the parent or guardian denies the allegations of the petition, the court must hold a  
20 contested hearing and determine whether the allegations in the petition are true.  
21

22 **(b) Admissibility of evidence—general (§§ 355, 355.1)**

23  
24 Except as provided in section 355.1 and (c), (d), and (e), the admission and  
25 exclusion of evidence must be in accordance with the Evidence Code as it applies  
26 to civil cases.  
27

28 **(c) Reports**

29  
30 A social study, with hearsay evidence contained in it, is admissible and is sufficient  
31 to support a finding that the child is described by section 300.  
32

33 (1) The social study must be provided to all parties and their counsel by the  
34 county welfare department within a reasonable time before the hearing.  
35

36 (2) The preparer of the report must be made available for cross-examination on  
37 the request of any party. The preparer may be on telephone standby if the  
38 preparer can be present in court within a reasonable time.  
39

40 **(d) Hearsay in the report (§ 355)**

41  
42 If a party makes an objection with reasonable specificity to particular hearsay in the  
43 report and provides petitioner a reasonable period to meet the objection, that

1 evidence must not be sufficient in and of itself to support a jurisdictional finding,  
2 unless:

3  
4 ~~(1) The hearsay is admissible under any statutory or judicial hearsay exception;~~

5  
6 ~~(2) The hearsay declarant is a child under 12 years of age who is the subject of~~  
7 ~~the petition, unless the objecting party establishes that the statement was~~  
8 ~~produced by fraud, deceit, or undue influence and is therefore unreliable;~~

9  
10 ~~(3) The hearsay declarant is a peace officer, a health practitioner, a social worker,~~  
11 ~~or a teacher and the statement would be admissible if the declarant were~~  
12 ~~testifying in court; or~~

13 (1) The petitioner establishes one or more of the exceptions in section 355(c); or

14  
15 ~~(4)(2)~~ The hearsay declarant is available for cross-examination.

16  
17 **(e) Inapplicable privileges (Evid. Code, §§ 972, 986)**

18  
19 The privilege not to testify or to be called as a witness against a spouse or domestic  
20 partner, and the confidential marital communication privilege, does not apply to  
21 dependency proceedings.

22  
23 **(f) Findings of court—allegations true (§ 356)**

24  
25 If the court determines by a preponderance of the evidence that the allegations of  
26 the petition are true, the court must make findings on each of the following, noted  
27 in the minutes:

28  
29 (1) Notice has been given as required by law;

30  
31 (2) The birthdate and county of residence of the child;

32  
33 (3) The allegations of the petition are true; and

34  
35 (4) The child is described under one or more specific subdivisions of section 300.

36  
37 **(g) Disposition and Continuance pending disposition hearing (§§ 356, 358)**

38  
39 After making the findings in (f), the court must proceed to a disposition hearing  
40 under rules ~~5.686 and 5.690~~. The court may continue the disposition hearing as  
41 provided in section 358.

1 **(h) Findings of court—allegations not proved (§§ 356, 361.1)**

2  
3 If the court determines that the allegations of the petition have not been proved by a  
4 preponderance of the evidence, the court must dismiss the petition and terminate  
5 any detention orders relating to the petition. The court must order that the child be  
6 returned to the physical custody of the parent or guardian immediately but, in any  
7 event, not more than two working days following the date of that finding, unless  
8 the parent or guardian and the agency with custody of the child agree to a later date  
9 for the child’s release. The court must make the following findings, noted in the  
10 order of the court:

- 11  
12 (1) Notice has been given as required by law;  
13  
14 (2) The birthdate and county of residence of the child; and  
15  
16 (3) The allegations of the petition are not proved.  
17

18 **~~Rule 5.686. Continuance pending disposition hearing~~**

19  
20 **~~(a)—Continuance pending disposition hearing (§ 358)~~**

21  
22 ~~Except as provided in (b), the court may continue the disposition hearing to a date~~  
23 ~~not to exceed 10 court days if the child is detained or, if the child is not detained, to~~  
24 ~~a date not to exceed 30 calendar days from the date of the finding under section~~  
25 ~~356. The court may for good cause continue the hearing for an additional 15~~  
26 ~~calendar days if the child is not detained.~~  
27

28 **~~(b)—Continuance if nonreunification is requested~~**

29  
30 ~~If petitioner alleges that section 361.5(b) is applicable, the court must continue the~~  
31 ~~proceedings not more than 30 calendar days. The court must order the petitioner to~~  
32 ~~notify each parent or guardian of the contents of section 361.5(b) and must inform~~  
33 ~~each parent that if reunification is not ordered at the disposition hearing, a section~~  
34 ~~366.26 implementation hearing will be held and parental rights may be terminated.~~  
35

36 **~~(e)—Detention pending continued hearing (§ 358)~~**

37  
38 ~~The court in its discretion may order release or detention of the child during the~~  
39 ~~continuance.~~  
40

41 **~~Rule 5.688. Failure to cooperate with services (§ 360(b))~~**

1 ~~(a) —~~ **Petition**

2  
3 ~~If the court has ordered services under section 360(b), and within the time period~~  
4 ~~consistent with section 301 the family is unable or unwilling to cooperate with the~~  
5 ~~services provided, a petition may be filed as provided in section 360(c).~~  
6

7  
8 ~~(b) —~~ **Order**

9  
10 ~~At the hearing on the petition the court must dismiss the petition or order a new~~  
11 ~~disposition hearing to be conducted under rule 5.690.~~  
12

13 **Rule 5.690. General conduct of disposition hearing**

14  
15 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5)**

16  
17 The petitioner must prepare a social study of the child. The social study must  
18 include a discussion of all matters relevant to disposition and a recommendation for  
19 disposition.  
20

21 (1) The petitioner must comply with the following when preparing the social  
22 study:

23  
24 (A) If petitioner recommends that the court appoint a legal guardian,  
25 petitioner must prepare an assessment under section 360(a), to be  
26 included in the social study report prepared for disposition or in a  
27 separate document.  
28

29 (B) If petitioner recommends removal of the child from the home, the  
30 social study must include:

31  
32 (i) A discussion of the reasonable efforts made to prevent or  
33 eliminate removal and a recommended plan for reuniting the  
34 child with the family, including a plan for visitation;  
35

36 (ii) A plan for achieving legal permanence for the child if efforts to  
37 reunify fail; and  
38

39 (iii) A statement that each parent has been advised of the option to  
40 participate in adoption planning and to voluntarily relinquish the  
41 child if an adoption agency is willing to accept the  
42 relinquishment, and the parent's response.  
43

- 1 (C) The social study should include a discussion of the social worker's  
2 efforts to comply with rule 5.637, including but not limited to:  
3  
4 (i) The number of relatives identified and the relationship of each to  
5 the child;  
6  
7 (ii) The number and relationship of those relatives described by item  
8 (i) who were located and notified;  
9  
10 (iii) The number and relationship of those relatives described by item  
11 (ii) who are interested in ongoing contact with the child; and  
12  
13 (iv) The number and relationship of those relatives described by item  
14 (ii) who are interested in providing placement for the child.  
15  
16 (D) If petitioner alleges that section 361.5(b) applies, the social study must  
17 state why reunification services should not be provided.  
18  
19 (E) All other relevant requirements of sections 358 and 358.1.  
20

- 21 (2) The petitioner must submit the social study and copies of it to the clerk at  
22 least 48 hours before the disposition hearing is set to begin, and the clerk  
23 must make the copies available to the parties and attorneys. A continuance  
24 within statutory time limits must be granted on the request of a party who has  
25 not been furnished a copy of the social study in accordance with this rule.  
26

27 **(b) Evidence considered (§§ 358, 360)**  
28

29 The court must receive in evidence and consider the social study, a guardianship  
30 assessment, the report of any CASA volunteer, the case plan, and any relevant  
31 evidence offered by petitioner, the child, or the parent or guardian. The court may  
32 require production of other relevant evidence on its own motion. In the order of  
33 disposition, the court must state that the social study and the study or evaluation by  
34 the CASA volunteer, if any, have been read and considered by the court.  
35

36 **(c) Case plan (§ 16501.1)**  
37

38 Whenever child welfare services are provided, the social worker must prepare a  
39 case plan as required in section 16501.1 and include it with the court report.  
40

- 41 ~~(1) A written case plan must be completed and filed with the court by the date of~~  
42 ~~disposition or within 60 calendar days of initial removal or of the in-person~~

1 response required under section 16501(f) if the child has not been removed  
2 from his or her home, whichever occurs first.

3  
4 (2) — The court must consider the case plan and must find as follows:

5  
6 (A) — The social worker solicited and integrated into the case plan the input  
7 of the child, the child's family, the child's identified Indian tribe,  
8 including consultation with the child's tribe on whether tribal  
9 eustomary adoption as defined in section 366.24 is an appropriate  
10 permanent plan for the child if reunification is unsuccessful; and other  
11 interested parties, or

12  
13 (B) — The social worker did not solicit and integrate into the case plan the  
14 input of the child, the child's family, the child's identified Indian tribe,  
15 and other interested parties. If the court finds that the social worker did  
16 not solicit and integrate into the case plan the input of the child, the  
17 child's family, the child's identified Indian tribe, and other interested  
18 parties, the court must order that the social worker solicit and integrate  
19 into the case plan the input of the child, the child's family, the child's  
20 identified Indian tribe, and other interested parties, unless the court  
21 finds that each of these participants was unable, unavailable, or  
22 unwilling to participate.

23  
24 (3) — For a child 12 years of age or older and in a permanent placement, the court  
25 must consider the case plan and must find as follows:

26  
27 (A) — The child was given the opportunity to review the case plan, sign it, and  
28 receive a copy; or

29  
30 (B) — The child was not given the opportunity to review the case plan, sign it,  
31 and receive a copy. If the court makes such a finding, the court must  
32 order the agency to give the child the opportunity to review the case  
33 plan, sign it, and receive a copy.

34  
35 **Rule 5.695. Findings and orders of the court—disposition**

36  
37 **(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**

38  
39 At the disposition hearing, the court may:

40  
41 (1) Dismiss the petition with specific reasons stated in the minutes;

- 1 (2) Place the child under a program of supervision as provided in section 301 and  
2 order that services be provided;  
3  
4 (3) Appoint a legal guardian for the child without declaring dependency and  
5 order the clerk to issue letters of guardianship, which are not subject to the  
6 confidential protections of juvenile court documents as described in section  
7 827;  
8  
9 (4) Declare dependency and appoint a legal guardian for the child as provided in  
10 section 360 and order the clerk to issue letters of guardianship, which are not  
11 subject to the confidential protections of juvenile court documents as  
12 described in section 827;  
13  
14 (5) Declare dependency, permit the child to remain at home, and order that  
15 services be provided;  
16  
17 (6) Declare dependency, permit the child to remain at home, limit the control to  
18 be exercised by the parent or guardian, and order that services be provided; or  
19  
20 (7) Declare dependency, remove physical custody from the parent or guardian,  
21 and:  
22  
23 (A) After stating on the record or in writing the factual basis for the order,  
24 order custody to a noncustodial parent, terminate jurisdiction, and  
25 direct that *Custody Order—Juvenile—Final Judgment* (form JV-200)  
26 be prepared and filed under rule 5.700;  
27  
28 (B) After stating on the record or in writing the factual basis for the order,  
29 order custody to a noncustodial parent with services to one or both  
30 parents; or  
31  
32 (C) Make a placement order and consider granting specific visitation rights  
33 to the child’s grandparents.  
34

35 ~~(b) Appointment of a legal guardian (§ 360)~~  
36

37 ~~(1) At the disposition hearing, the court may appoint a legal guardian for the~~  
38 ~~child if:~~  
39

40 ~~(A) The parent has advised the court that the parent does not wish to~~  
41 ~~receive family maintenance services or family reunification services;~~  
42

1           ~~(B) The parent has executed and submitted *Waiver of Reunification*~~  
2           ~~*Services (Juvenile Dependency)* (form JV 195);~~

3  
4           ~~(C) The court finds that the parent, and the child if of sufficient age and~~  
5           ~~comprehension, knowingly and voluntarily waive their rights to~~  
6           ~~reunification services and agree to the appointment of the legal~~  
7           ~~guardian; and~~

8  
9           ~~(D) The court finds that the appointment of the legal guardian is in the best~~  
10           ~~interest of the child.~~

11  
12       ~~(2) If the court appoints a legal guardian, it must:~~

13  
14           ~~(A) State on the record or in the minutes that it has read and considered the~~  
15           ~~assessment;~~

16  
17           ~~(B) State on the record or in the minutes its findings and the factual bases~~  
18           ~~for them;~~

19  
20           ~~(C) Advise the parent that no reunification services will be offered or~~  
21           ~~provided;~~

22  
23           ~~(D) Make any appropriate orders regarding visitation between the child and~~  
24           ~~the parent or other relative, including any sibling; and~~

25  
26           ~~(E) Order the clerk to issue letters of guardianship, which are not subject to~~  
27           ~~the confidential protections of juvenile court documents as described in~~  
28           ~~section 827.~~

29  
30       ~~(3) The court may appoint a legal guardian without declaring the child a~~  
31       ~~dependent of the court. If dependency is declared, a six month review hearing~~  
32       ~~must be set.~~

33  
34       ~~**(e)(b) Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)**~~

35  
36           (1) If a child is declared a dependent, the court may clearly and specifically limit  
37           the control over the child by a parent or guardian.

38  
39           (2) If the court orders that a parent or guardian retain physical custody of the  
40           child subject to court-ordered supervision, the parent or guardian must be  
41           ordered to participate in child welfare services or services provided by an  
42           appropriate agency designated by the court.

1 (3) The court must consider whether it is necessary to limit the rights of the  
2 parent or guardian to make educational or developmental-services decisions  
3 for the child or youth. If the court limits those rights, it must follow the  
4 procedures in rules 5.649–5.651.  
5

6 **~~(d)~~(c) Removal of custody—required findings (§ 361)**  
7

8 The court may not order a dependent removed from the physical custody of a  
9 parent or guardian with whom the child resided at the time the petition was filed,  
10 unless the court ~~finds~~ makes one or more of the findings in subdivision (c) of  
11 section 361 by clear and convincing evidence, ~~any of the following:~~  
12

13 ~~(1) There is a substantial danger to the physical health, safety, protection, or~~  
14 ~~physical or emotional well-being of the child, or will be if the child is~~  
15 ~~returned home, and there is no reasonable alternative means to protect that~~  
16 ~~child;~~  
17

18 ~~(2) The parent or guardian is unwilling to have physical custody of the child and~~  
19 ~~has been notified that if the child remains out of the parent’s or guardian’s~~  
20 ~~physical custody for the period specified in section 366.26, the child may be~~  
21 ~~declared permanently free of his or her custody and control;~~  
22

23 ~~(3) The child is suffering severe emotional damage, as indicated by extreme~~  
24 ~~anxiety, depression, withdrawal, or untoward aggressive behavior toward self~~  
25 ~~or others, and no reasonable alternative means to protect the child’s~~  
26 ~~emotional health exists;~~  
27

28 ~~(4) The child has been sexually abused by a parent or guardian or member of the~~  
29 ~~household or other person known to his or her parent and there is no~~  
30 ~~reasonable alternative means to protect the child or the child does not wish to~~  
31 ~~return to the parent or guardian; or~~  
32

33 ~~(5) The child has been left without any provisions for his or her support and there~~  
34 ~~is no parent or guardian available to maintain or provide for the care, custody,~~  
35 ~~and control of the child.~~  
36

37 **~~(e)~~(d) Reasonable efforts finding**  
38

39 The court must consider whether reasonable efforts to prevent or eliminate the need  
40 for removal have been made and make one of the following findings:  
41

42 (1) Reasonable efforts have been made; or  
43

1 (2) Reasonable efforts have not been made.

2

3 ~~(f)~~(e) **Family-finding determination (§ 309)**

4

5 (1) If the child is removed, the court must consider and determine whether the  
6 social worker has exercised due diligence in conducting the required  
7 investigation to identify, locate, and notify the child’s relatives. The court  
8 may consider the activities listed in (g) as examples of due diligence. The  
9 court must document its determination by making a finding on the record.

10

11 If the dispositional hearing is continued, the court may set a hearing to be  
12 held 30 days from the date of removal or as soon as possible thereafter to  
13 consider and determine whether the social worker has exercised due diligence  
14 in conducting the required investigation to identify, locate, and notify the  
15 child’s relatives.

16

17 (2) If the court finds that the social worker has not exercised due diligence, the  
18 court may order the social worker to exercise due diligence in conducting an  
19 investigation to identify, locate, and notify the child’s relatives—except for  
20 any individual the social worker identifies as inappropriate to notify under  
21 rule 5.637(b)—and may require a written or oral report to the court.

22

23 ~~(g)~~(f) **Due diligence (§ 309)**

24

25 When making the determination required in (f), the court may consider, among  
26 other examples of due diligence, whether the social worker has done any of the  
27 following:

28

29 (1) Asked the child, in an age-appropriate manner and consistent with the child’s  
30 best interest, about his or her relatives;

31

32 (2) Obtained information regarding the location of the child’s relatives;

33

34 (3) Reviewed the child’s case file for any information regarding relatives;

35

36 (4) Telephoned, e-mailed, or visited all identified relatives;

37

38 (5) Asked located relatives for the names and locations of other relatives;

39

40 (6) Used Internet search tools to locate relatives identified as supports; or

41

- 1 (7) Developed tools, including a genogram, family tree, family map, or other  
2 diagram of family relationships, to help the child or parents to identify  
3 relatives.  
4

5 **(h)(g) Provision of reunification services (§ 361.5)**  
6

- 7 (1) Unless the court makes a finding that reunification services need not be  
8 provided under subdivision (b) of section 361.5 ~~Except as provided in (6),~~ if a  
9 child is removed from the custody of a parent or legal guardian, the court  
10 must order the county welfare department to provide reunification services to  
11 the child and the child's mother and statutorily presumed parent, or the  
12 child's legal guardian, to facilitate reunification of the family as required in  
13 section 361.5. ~~For a child who was three years of age or older on the date of~~  
14 ~~initial removal, services must be provided during the time period beginning~~  
15 ~~with the dispositional hearing and ending 12 months after the date the child~~  
16 ~~entered foster care, as defined by section 361.49. For a child who was under~~  
17 ~~three years of age on the date of initial removal, services must be provided~~  
18 ~~for a period of 6 months from the dispositional hearing, but no longer than 12~~  
19 ~~months from the date the child entered foster care, as defined by section~~  
20 ~~361.49. The time period for the provision of family reunification services~~  
21 ~~must be calculated consistent with section 361.5(a). The court must inform~~  
22 ~~the parent or legal guardian of a child who was under three when initially~~  
23 ~~removed that failure to participate regularly and make substantive progress in~~  
24 ~~court-ordered treatment programs may result in the termination of~~  
25 ~~reunification efforts after 6 months from the date of the dispositional hearing.~~  
26

- 27 ~~(2) If a child is a member of a sibling group removed from parental custody at~~  
28 ~~the same time, and one member of the sibling group was under three at the~~  
29 ~~time of the initial removal, reunification services for some or all members of~~  
30 ~~the sibling group may be limited to 6 months from the dispositional hearing,~~  
31 ~~and no later than 12 months from the date the children entered foster care.~~  
32 ~~The court must inform the parent or legal guardian of a child who is a~~  
33 ~~member of such a sibling group that failure to participate regularly and make~~  
34 ~~substantive progress in court-ordered treatment programs may result in~~  
35 ~~termination of reunification efforts after 6 months for one or more members~~  
36 ~~of the sibling group.~~  
37

- 38 ~~(3)~~(2) On a finding and declaration of paternity by the juvenile court or proof of a  
39 prior declaration of paternity by any court of competent jurisdiction, the  
40 juvenile court may order services for the child and the biological father, if the  
41 court determines that such services will benefit the child.  
42

1           ~~(4) Any motion to terminate reunification services before the permanency~~  
2           ~~hearing set under section 366.21(f) for a child age three or older, or before~~  
3           ~~the 6-month review hearing set under section 366.21(e) for a child under age~~  
4           ~~three, must follow the requirements in section 388(c) and rule 5.570. A~~  
5           ~~motion to terminate reunification services at the 6-month review hearing is~~  
6           ~~not required if the court finds by clear and convincing evidence that one or~~  
7           ~~more of the circumstances described in section 361.5(a)(2) and rule~~  
8           ~~5.710(c)(1)(A) is true.~~

9  
10          ~~(5)(3)~~ If a child is removed from the custody of a parent or guardian, and  
11           reunification services are ordered, the court must order visitation between the  
12           child and the parent or guardian for whom services are ordered. Visits are to  
13           be as frequent as possible, consistent with the well-being of the child.

14  
15          ~~(6)(4)~~ Reunification services must not be provided when the parent has voluntarily  
16           relinquished the child and the relinquishment has been filed with the State  
17           Department of Social Services, or if the court has appointed a guardian under  
18           section 360. ~~Reunification services need not be provided to a parent or~~  
19           ~~guardian if the court finds, by clear and convincing evidence, any of the~~  
20           ~~following:~~

21  
22           ~~(A) The whereabouts of the parent or guardian are unknown. This finding~~  
23           ~~must be supported by a declaration or by proof that a reasonably~~  
24           ~~diligent search has failed to locate the parent. Posting or publishing~~  
25           ~~notice is not required.~~

26  
27           ~~(B) The parent or guardian is suffering from a mental disability described~~  
28           ~~in chapter 2 (commencing with section 7820) of part 4 of division 12 of~~  
29           ~~the Family Code that renders the parent incapable of using those~~  
30           ~~services.~~

31  
32           ~~(C) The child had been previously declared a dependent under any~~  
33           ~~subdivision of section 300 as a result of physical or sexual abuse;~~  
34           ~~following that adjudication the child had been removed from the~~  
35           ~~eustody of the parent or guardian under section 361; the child has been~~  
36           ~~returned to the custody of the parent or guardian from whom the child~~  
37           ~~had been taken originally; and the child is being removed under section~~  
38           ~~361 because of additional physical or sexual abuse.~~

39  
40           ~~(D) The parent or guardian of the child has caused the death of another~~  
41           ~~child through abuse or neglect.~~

- 1                   ~~(E) — The child was brought within the jurisdiction of the court under (e) of~~  
2                   ~~section 300 because of the conduct of that parent or guardian.~~  
3
- 4                   ~~(F) — The child is a dependent as a result of the determination that the child, a~~  
5                   ~~sibling, or a half sibling suffered severe sexual abuse, as defined in~~  
6                   ~~section 361.5(b)(6), by the parent or guardian or that the parent or~~  
7                   ~~guardian inflicted severe physical harm, as defined in section~~  
8                   ~~361.5(b)(6), on the child, a sibling, or a half sibling, and the court finds~~  
9                   ~~that attempts to reunify would not benefit the child. The court must~~  
10                  ~~specify on the record the basis for the finding that the child suffered~~  
11                  ~~severe sexual abuse or the infliction of severe physical harm.~~  
12
- 13                  ~~(G) — The parent or guardian is not receiving reunification services for a~~  
14                  ~~sibling or half sibling of the child, for reasons under (C), (E), or (F).~~  
15
- 16                  ~~(H) — The child was conceived as a result of the parent having committed an~~  
17                  ~~offense listed in Penal Code section 288 or 288.5, or by an act~~  
18                  ~~described by either section but committed outside California.~~  
19
- 20                  ~~(I) — The court has found that the child is described by (g) of section 300,~~  
21                  ~~that the child was willfully abandoned by the parent or guardian, and~~  
22                  ~~that the abandonment constituted serious danger to the child as defined~~  
23                  ~~in section 361.5(b)(9).~~  
24
- 25                  ~~(J) — The court has terminated reunification services for a sibling or half~~  
26                  ~~sibling of the child because the parent failed to reunify with the sibling~~  
27                  ~~or half sibling, and the parent or guardian has not made a reasonable~~  
28                  ~~effort to treat the problems that led to the removal of the sibling or half~~  
29                  ~~sibling from that parent or guardian.~~  
30
- 31                  ~~(K) — The parental rights of a parent over any sibling or half sibling of the~~  
32                  ~~child have been terminated, and the parent has not subsequently made a~~  
33                  ~~reasonable effort to treat the problem that led to the removal of the~~  
34                  ~~sibling or half sibling.~~  
35
- 36                  ~~(L) — The parent or guardian has been convicted of a violent felony as~~  
37                  ~~defined in Penal Code section 667.5(c).~~  
38
- 39                  ~~(M) — The parent or guardian has a history of extensive, abusive, and chronic~~  
40                  ~~use of alcohol or other drugs and has not sought or participated in~~  
41                  ~~treatment during the three years immediately prior to the filing of the~~  
42                  ~~petition under section 300, or has failed, on at least two prior occasions,~~  
43                  ~~to comply with an available and accessible treatment program~~

1 described in the case plan required by section 358.1, and the removal of  
2 the child is based in whole or in part on the risk to the child presented  
3 by the use of alcohol or other drugs.  
4

5 ~~(N) — The parent or guardian, who must be represented by counsel, has  
6 advised the court through the execution and submission of *Waiver of  
7 Reunification Services (Juvenile Dependency)* (form JV 195) that that  
8 parent or guardian does not wish to receive family maintenance or  
9 reunification services and does not wish the child returned or placed in  
10 the custody of that parent or guardian. The court may accept the waiver  
11 only on a finding on the record that the parent or guardian has  
12 knowingly and intelligently waived the right to services.~~

13  
14 ~~(O) — On at least one occasion, the parent or guardian has abducted the child  
15 or a sibling or half sibling from placement and has refused to disclose  
16 the abducted child's whereabouts or has refused to return custody of the  
17 abducted child to the placement or to the social worker.~~  
18

19 ~~(7) — In deciding whether to order reunification in any case in which petitioner  
20 alleges that section 361.5(b) applies, the court must consider the report  
21 prepared by petitioner, which must discuss the factors contained in section  
22 361.5(c).~~

23  
24 ~~(8) — If the petitioner alleges that section 361.5(c) applies, the report prepared for  
25 disposition must address the issue of reunification services. At the disposition  
26 hearing, the court must consider the factors stated in section 361.5.~~  
27

28 ~~(9) — If the court finds under (6)(A) that the whereabouts of the parent or guardian  
29 are unknown and that a diligent search has failed to locate the parent or  
30 guardian, the court may not order reunification services and must set the  
31 matter for a 6-month review hearing. If the parent or guardian is located prior  
32 to the 6-month review and requests reunification services, the welfare  
33 department must seek a modification of the disposition orders. The time  
34 limits for reunification services must be calculated from the date of the initial  
35 removal, and not from the date the parent is located or services are ordered.~~  
36

37 ~~(10) — If the court finds that allegations under (6)(B) are proved, the court must  
38 nevertheless order reunification services unless evidence by mental health  
39 professionals establishes by clear and convincing evidence that the parent is  
40 unlikely to be able to care for the child within the next 12 months.~~  
41

42 ~~(11) — If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J),  
43 (K), (L), (M), (N), or (O) have been proved, the court may not order~~

1 reunification services unless the party seeking the order for services proves  
2 by clear and convincing evidence that reunification is in the best interest of  
3 the child. If (6)(F) is found to apply, the court must consider the factors in  
4 section 361.5(h) in determining whether the child will benefit from services  
5 and must specify on the record the factual findings on which it based its  
6 determination that the child will not benefit.

7  
8 ~~(12) If the court finds that the allegations under (6)(E) have been proved, the court  
9 may not order reunification services unless it finds, based on consideration of  
10 factors in section 361.5(b) and (c), that services are likely to prevent reabuse  
11 or continued neglect or that failure to attempt reunification will be  
12 detrimental to the child.~~

13  
14 ~~(13) If the parent or guardian is institutionalized, incarcerated, or detained by the  
15 United States Department of Homeland Security, or has been deported to his  
16 or her country of origin, the court must order reunification services unless it  
17 finds by clear and convincing evidence that the services would be detrimental  
18 to the child, with consideration of the factors in section 361.5(e). The court  
19 may order reunification services with an institutionalized, incarcerated,  
20 detained, or deported biological father whose paternity has been declared by  
21 the juvenile court or another court of competent jurisdiction, if the court  
22 determines that such services would benefit the child, with consideration of  
23 the factors in section 361.5(e).~~

24  
25 ~~(14) (5) If, with the exception of (6)(A) Except when the order is made under  
26 paragraph (1) of subdivision (b) of section 361.5, if the court orders no  
27 reunification services for every parent otherwise eligible for such services  
28 under (1) and (2), the court must conduct a hearing under section 366.26  
29 within 120 days and:~~

30  
31 (A) Order that the social worker provide a copy of the child's birth  
32 certificate to the caregiver consistent with sections 16010.4(e)(5) and  
33 16010.5(b)-(c); and

34  
35 (B) Order that the social worker provide a child or youth 16 years of age or  
36 older with a certified copy of his or her birth certificate unless the court  
37 finds that provision of the birth certificate would be inappropriate.

38  
39 ~~(15) (6) A judgment, order, or decree setting a hearing under section 366.26 is not  
40 an immediately appealable order. Review may be sought only by filing  
41 *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*  
42 *8.456)* (form JV-825) or other petition for extraordinary writ. If a party  
43 wishes to preserve any right to review on appeal of the findings and orders~~

1 made under this rule, the party must seek an extraordinary writ under rules  
2 8.450 and 8.452.

3  
4 ~~(16)~~ (7) A judgment, order, or decree setting a hearing under section 366.26 may be  
5 reviewed on appeal following the order of the 366.26 hearing only if the  
6 following have occurred:

7  
8 (A) An extraordinary writ was sought by the timely filing of *Petition for*  
9 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)*  
10 (form JV-825) or other petition for extraordinary writ; and

11  
12 (B) The petition for extraordinary writ was summarily denied or otherwise  
13 not decided on the merits.

14  
15 ~~(17)~~ (8) Review on appeal of the order setting a hearing under section 366.26 is  
16 limited to issues raised in a previous petition for extraordinary writ that were  
17 supported by an adequate record.

18  
19 ~~(18)~~ (9) Failure to file a petition for extraordinary writ review within the period  
20 specified by rules 8.450 and 8.452, to substantively address the issues  
21 challenged, or to support the challenge by an adequate record precludes  
22 subsequent review on appeal of the findings and orders made under this rule.

23  
24 ~~(19)~~ (10) When the court orders a hearing under section 366.26, the court must  
25 advise orally all parties present, and by first-class mail for parties not present,  
26 that if the party wishes to preserve any right to review on appeal of the order  
27 setting the hearing under section 366.26, the party must seek an extraordinary  
28 writ by filing a *Notice of Intent to File Writ Petition and Request for Record*  
29 *(California Rules of Court, Rule 8.450)* (form JV-820) or other notice of  
30 intent to file a writ petition and request for record and a *Petition for*  
31 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-  
32 825) or other petition for extraordinary writ.

33  
34 (A) Within 24 hours of the hearing, notice by first-class mail must be  
35 provided by the clerk of the court to the last known address of any  
36 party who is not present when the court orders the hearing under  
37 section 366.26.

38  
39 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*  
40 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*  
41 *Petition and Request for Record (California Rules of Court, Rule*  
42 *8.450)* (form JV-820) must be available in the courtroom and must  
43 accompany all mailed notices informing the parties of their rights.

1  
2 **(h) Information regarding termination of parent-child relationship (§§ 361,**  
3 **361.5)**

4  
5 If a child is removed from the physical custody of the parent or guardian under  
6 either section 361 or 361.5, the court must:

- 7  
8 (1) State the facts on which the decision is based; and  
9  
10 (2) Notify the parents that their parental rights may be terminated if custody is  
11 not returned within 6 months of the dispositional hearing or within 12 months  
12 of the date the child entered foster care, whichever time limit is applicable.  
13

14 **~~(j)~~ (i) Setting 6-month review (§§ 361.5, 366)**

15  
16 ~~Review of the status of every dependent child must be performed within 6 months~~  
17 ~~after the date of the original disposition order, and no later than 6 months after the~~  
18 ~~date the child is determined to have entered foster care; the review must be~~  
19 ~~scheduled on the appearance calendar. The court must advise the dependent child~~  
20 ~~of the child's right to petition for modifications of court orders as required in~~  
21 ~~section 353.1.~~  
22

23 **~~(k)~~ (i) Fifteen-day reviews (§ 367)**

24  
25 If a child is detained pending the execution of the disposition order, the court must  
26 review the case at least every 15 calendar days to determine whether the delay is  
27 reasonable. During each review the court must inquire about the action taken by the  
28 probation or welfare department to carry out the court's order, the reasons for the  
29 delay, and the effect of the delay on the child.  
30

31 **~~(l)~~ (i) Setting a hearing under section 366.26**

32  
33 At the disposition hearing, the court may not set a hearing under section 366.26 to  
34 consider termination of the rights of only one parent unless that parent is the only  
35 surviving parent, or the rights of the other parent have been terminated by a  
36 California court of competent jurisdiction or by a court of competent jurisdiction of  
37 another state under the statutes of that state, or the other parent has relinquished  
38 custody of the child to the county welfare department.  
39

40 **Rule 5.700 \* \* \***

41  
42 **Rule 5.705 \* \* \***

1  
2 **Rule 5.706. Family maintenance review hearings (§ 364)**  
3

4 **(a) — Setting of hearing (§ 364)**  
5

6 ~~If the child remains in the custody of the parent or legal guardian, a review hearing~~  
7 ~~must be held within six months after the date of the original dispositional hearing~~  
8 ~~and no less frequently than once every six months thereafter as long as the child~~  
9 ~~remains a dependent.~~  
10

11 **(b)(a) Notice (§ 292)**  
12

13 The petitioner or the court clerk must give notice of review hearings on *Notice of*  
14 *Review Hearing* (form JV-280), in the manner provided in section 292, to all  
15 persons required to receive notice under section 292 and to any CASA volunteer  
16 that has been appointed on the case.  
17

18 **(c) — Reports (§ 364)**  
19

20 ~~At least 10 calendar days before the hearing, the petitioner must file a supplemental~~  
21 ~~report with the court describing the services offered to the family, the progress~~  
22 ~~made by the family in eliminating the conditions or factors requiring court~~  
23 ~~supervision, and the petitioner's recommendation regarding the necessity of~~  
24 ~~continued supervision. A copy of the report must be provided to all parties at least~~  
25 ~~10 calendar days before the hearing.~~  
26

27 **(d)(b) Court considerations and findings**  
28

- 29 (1) The court must consider the report prepared by the petitioner, the report of  
30 any CASA volunteer, and the case plan submitted for this hearing.  
31
- 32 (2) In considering the case plan submitted for the hearing, the court must find as  
33 follows:  
34
- 35 (A) The child was actively involved in the development of his or her own  
36 case plan as age and developmentally appropriate; or  
37
- 38 (B) The child was not actively involved in the development of his or her  
39 own case plan. If the court makes such a finding, the court must order  
40 the agency to actively involve the child in the development of his or her  
41 own case plan, unless the court finds that the child is unable,  
42 unavailable, or unwilling to participate; and  
43

1 (C) Each parent was actively involved in the development of the case plan;  
2 or

3  
4 (D) Each parent was not actively involved in the development of the case  
5 plan. If the court makes such a finding, the court must order the agency  
6 to actively involve each parent in the development of the case plan,  
7 unless the court finds that each parent is unable, unavailable, or  
8 unwilling to participate.  
9

10 **(e)(c) Conduct of hearing (§ 364)**

11  
12 ~~(1) — The court must determine whether continued supervision is necessary. The~~  
13 ~~court must terminate its dependency jurisdiction unless the court finds that~~  
14 ~~the petitioner has established by a preponderance of the evidence that existing~~  
15 ~~conditions would justify initial assumption of jurisdiction under section 300~~  
16 ~~or that such conditions are likely to exist if supervision is withdrawn. Failure~~  
17 ~~of the parent or legal guardian to participate regularly in any court ordered~~  
18 ~~treatment program constitutes prima facie evidence that the conditions that~~  
19 ~~justified initial assumption of jurisdiction still exist and that continued~~  
20 ~~supervision is necessary.~~

21  
22 ~~(2) If the court retains jurisdiction, the court must order continued services and~~  
23 ~~set a review hearing within six months, under this rule.~~  
24

25 **(f)(d) Reasonable cause (§ 364)**

26  
27 In any case in which the court has ordered that a parent or legal guardian retain  
28 physical custody of a child subject to supervision by a social worker, and the social  
29 worker subsequently receives a report of acts or circumstances that indicate there is  
30 reasonable cause to believe that the child is a person described under section  
31 300(a), (d), or (e), the social worker must file a subsequent petition under section  
32 342 or a supplemental petition under section 387. If, as a result of the proceedings  
33 under the section 342 or 387 petition, the court finds that the child is a person  
34 described in section 300(a), (d), or (e), the court must remove the child from the  
35 care, custody, and control of the child's parent or legal guardian and must commit  
36 the child to the care, custody, and control of the social worker under section 361.  
37

38 **(g)(e) Child's education (§§ 361, 366, 366.1)**

39  
40 The court must consider the child's education, including whether it is necessary to  
41 limit the right of the parent or legal guardian to make educational decisions for the  
42 child, following the requirements and procedures in rules 5.650 and 5.651 and in  
43 section 361(a).

1  
2 **Rule 5.707 \* \* \***

3  
4 **Rule 5.708. General review hearing requirements**

5  
6 ~~(a)~~ **Setting of review hearings (§ 366)**

7  
8 ~~The status of every dependent child who has been removed from the custody of the~~  
9 ~~parent or legal guardian must be reviewed periodically but no less frequently than~~  
10 ~~once every 6 months until the section 366.26 hearing is completed. Review~~  
11 ~~hearings must be set as described in rule 5.710 (for 6 month review hearings), rule~~  
12 ~~5.715 (for 12 month permanency hearings), rule 5.720 (for 18 month permanency~~  
13 ~~review hearings), or rule 5.722 (for 24 month subsequent permanency review~~  
14 ~~hearings).~~

15  
16 ~~(b)~~**(a) Notice of hearing (§ 293)**

17  
18 The petitioner or the clerk must serve written notice of review hearings on *Notice*  
19 *of Review Hearing* (form JV-280), in the manner provided in section 293, to all  
20 persons or entities entitled to notice under section 293 and to any CASA volunteer,  
21 educational rights holder, or surrogate parent appointed to the case.  
22

23 ~~(e)~~**(b) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)**

24  
25 Before the hearing, the social worker must investigate and file a report describing  
26 the services offered to the family, progress made, and, if relevant, the prognosis for  
27 return of the child to the parent or legal guardian.  
28

29 (1) The report must include:

- 30  
31 (A) Recommendations for court orders and the reasons for those  
32 recommendations;  
33  
34 (B) A description of the efforts made to achieve legal permanence for the  
35 child if reunification efforts fail;  
36  
37 (C) A factual discussion of each item listed in sections 366.1 and 366.21(c);  
38 and  
39  
40 (D) A factual discussion of the information required by section 16002(b).  
41

42 (2) At least 10 calendar days before the hearing, the social worker must file the  
43 report and provide copies to the parent or legal guardian and his or her

1 counsel, to counsel for the child, to any CASA volunteer, and, in the case of  
2 an Indian child, to the child's identified Indian tribe. The social worker must  
3 provide a summary of the recommendations to any foster parents, relative  
4 caregivers, or certified foster parents who have been approved for adoption.  
5

- 6 (3) The court must read and consider, and state on the record that it has read and  
7 considered, the report of the social worker, the report of any CASA  
8 volunteer, the case plan submitted for the hearing, any report submitted by  
9 the child's caregiver under section 366.21(d), and any other evidence.  
10

11 ~~(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)~~

12  
13 ~~(1) If the child was removed from the custody of the parent or legal guardian, the~~  
14 ~~court must order the child returned unless the court finds by a preponderance~~  
15 ~~of the evidence that return of the child to the parent or legal guardian would~~  
16 ~~create a substantial risk of detriment to the safety, protection, or physical or~~  
17 ~~emotional well-being of the child. The social worker has the burden of~~  
18 ~~establishing that detriment.~~  
19

20 ~~(2) The court must consider whether the child can be returned to the custody of~~  
21 ~~his or her parent who is enrolled in a certified substance abuse treatment~~  
22 ~~facility that allows a dependent child to reside with his or her parent.~~  
23

24 ~~(3) Failure of the parent or legal guardian to regularly participate and make~~  
25 ~~substantive progress in any court ordered treatment program is prima facie~~  
26 ~~evidence that continued supervision is necessary or that return would be~~  
27 ~~detrimental.~~  
28

29 ~~(4) In making its determination about whether returning the child would be~~  
30 ~~detrimental, the court must consider the following:~~  
31

32 ~~(A) The social worker's report and recommendations and the report and~~  
33 ~~recommendations of any CASA volunteer who has been appointed on~~  
34 ~~the case;~~  
35

36 ~~(B) The efforts or progress demonstrated by the parent or legal guardian;~~  
37 ~~and~~  
38

39 ~~(C) The extent to which the parent or legal guardian availed himself or~~  
40 ~~herself of the services provided, taking into account the particular~~  
41 ~~barriers to an incarcerated or institutionalized parent or legal guardian's~~  
42 ~~access to court mandated services and the ability to maintain contact~~  
43 ~~with his or her child.~~

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~~(5) — If the parent or legal guardian agreed to submit fingerprints to obtain criminal history information as part of the case plan, the court must consider the criminal history of the parent or legal guardian after the child’s removal to the extent that the criminal record is substantially related to the welfare of the child or the parent’s or legal guardian’s ability to exercise custody and control regarding his or her child.~~

~~(6) — Regardless of whether the child is returned home, the court must specify the factual basis for its conclusion that the return would or would not be detrimental.~~

**(e)(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25)**

(1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that:

- (A) Reasonable services have been offered or provided; or
- (B) Reasonable services have not been offered or provided.

~~(2) — The following factors are not sufficient, in and of themselves, to support a finding that reasonable services have not been offered or provided:~~

- ~~(A) — The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~
- ~~(B) — The case plan includes services to achieve legal permanence for the child if reunification cannot be accomplished; or~~
- ~~(C) — Services to achieve legal permanence for the child if reunification efforts fail are being provided concurrently with reunification services.~~

**(f)(d) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)**

The court must consider the educational and developmental-services needs of each child and nonminor or nonminor dependent, including whether it is necessary to limit the rights of the parent or legal guardian to make educational or developmental-services decisions for the child or youth. If the court limits those rights or, in the case of a nonminor or nonminor dependent youth who has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that appointment would be in the best interests

1 of the nonminor or nonminor dependent the court must appoint a responsible adult  
2 as the educational rights holder as defined in rule 5.502. Any limitation on the  
3 rights of a parent or guardian to make educational or developmental-services  
4 decisions for the child or youth must be specified in the court order. The court must  
5 follow the procedures in rules 5.649–5.651.

6  
7 **~~(g)~~(e) Case plan (§§ 16001.9, 16501.1)**  
8

9 The court must consider the case plan submitted for the hearing and must  
10 determine:

- 11
- 12 (1) Whether the child was actively involved, as age- and developmentally  
13 appropriate, in the development of his or her own case plan and plan for  
14 permanent placement. If the court finds that the child or youth was not  
15 appropriately involved, the court must order the agency to actively involve  
16 the child in the development of his or her own case plan and plan for  
17 permanent placement, unless the court finds that the child is unable,  
18 unavailable, or unwilling to participate.  
19
- 20 (2) Whether each parent was actively involved in the development of the case  
21 plan and plan for permanent placement. If the court finds that any parent was  
22 not actively involved, the court must order the agency to actively involve that  
23 parent in the development of the case plan and plan for permanent placement,  
24 unless the court finds that the parent is unable, unavailable, or unwilling to  
25 participate.  
26
- 27 (3) In the case of an Indian child, whether the agency consulted with the Indian  
28 child’s tribe, as defined in rule 5.502, and the tribe was actively involved in  
29 the development of the case plan and plan for permanent placement,  
30 including consideration of tribal customary adoption as an appropriate  
31 permanent plan for the child if reunification is unsuccessful. If the court finds  
32 that the agency did not consult the Indian child’s tribe, the court must order  
33 the agency to do so, unless the court finds that the tribe is unable,  
34 unavailable, or unwilling to participate.  
35
- 36 (4) For a child 12 years of age or older in a permanent placement, whether the  
37 child was given the opportunity to review the case plan, sign it, and receive a  
38 copy. If the court finds that the child or youth was not given this opportunity,  
39 the court must order the agency to give the child the opportunity to review  
40 the case plan, sign it, and receive a copy.  
41

42 **~~(h) — Out-of-state placement (§§ 361.21, 366)~~**  
43

1 If the child has been placed out of the state, the court must consider whether the  
2 placement continues to be the most appropriate placement for the child and in the  
3 child's best interest. If the child is in an out of state group home, the court must  
4 follow the requirements in section 361.21.  
5

6 ~~(i)~~ **Title IV-E findings (§ 366)**  
7

8 Regardless of whether or not the child is returned home, the court must consider the  
9 safety of the child and must determine all of the following:  
10

11 (1) ~~The continuing necessity for and appropriateness of the placement;~~  
12

13 (2) ~~The extent of the agency's compliance with the case plan in making reasonable~~  
14 ~~efforts or, in the case of an Indian child, active efforts as described in section~~  
15 ~~361.7, to return the child to a safe home and to complete any steps necessary~~  
16 ~~to finalize the permanent placement of the child. These steps include efforts to~~  
17 ~~maintain relationships between a child who is 10 years or older who has been~~  
18 ~~in an out-of-home placement for 6 months or longer and individuals other than~~  
19 ~~the child's siblings who are important to the child, consistent with the child's~~  
20 ~~best interest;~~  
21

22 (3) ~~The extent of progress that has been made by the parents or legal guardians~~  
23 ~~toward alleviating or mitigating the causes necessitating placement in foster~~  
24 ~~care; and~~  
25

26 (4) ~~The likely date by which the child may be returned to and safely maintained in~~  
27 ~~the home or placed for adoption, legal guardianship, or in another planned~~  
28 ~~permanent living arrangement.~~  
29

30 ~~(j)~~(f) **Sibling findings; additional findings (§§ 366, 16002)**  
31

32 (1) The court must determine whether the child has other siblings under the  
33 court's jurisdiction. If so, the court must make the additional determinations  
34 required by section 366(a)(1)(D); and  
35

36 (2) The court must enter any additional findings as required by section 366 and  
37 section 16002.  
38

39 ~~(k)~~(g) **Placement with noncustodial parent (§ 361.2)**  
40

41 If at any review hearing the court places the child with a noncustodial parent, or if  
42 the court has previously made such a placement, the court may, after stating on the  
43 record or in writing the factual basis for the order:

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43

- (1) Continue supervision and reunification services;
- (2) Order custody to the noncustodial parent, continue supervision, and order family maintenance services; or
- (3) Order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700.

**~~(h)~~(h) Setting a hearing under section 366.26 for one parent**

The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

- (1) That parent is the only surviving parent;
- (2) The rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or
- (3) The other parent has relinquished custody of the child to the county welfare department.

**~~(m)~~ Setting a hearing under section 366.26; reasonable services requirement (§§ 366.21, 366.22)**

~~At any 6 month, 12 month, or 18 month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.~~

**~~(n)~~(i) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

The court must make the following orders and determinations when setting a hearing under section 366.26:

- ~~(1) The court must terminate reunification services to the parent or legal guardian and:~~
  - ~~(A) Order that the social worker provide a copy of the child’s birth certificate to the caregiver as consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and~~

1                   ~~(B) — Order that the social worker provide a child 16 years of age or older~~  
2                   ~~with a copy of his or her birth certificate unless the court finds that~~  
3                   ~~provision of the birth certificate would be inappropriate.~~  
4

5                   ~~(2) — The court must continue to permit the parent or legal guardian to visit the~~  
6                   ~~child, unless it finds that visitation would be detrimental to the child;~~  
7

8                   ~~(3) — If the child is 10 years of age or older and is placed in an out-of-home~~  
9                   ~~placement for 6 months or longer, the court must enter any other appropriate~~  
10                  ~~orders to enable the child to maintain relationships with other individuals~~  
11                  ~~who are important to the child, consistent with the child's best interest.~~  
12                  ~~Specifically, the court:~~  
13

14                  ~~(A) — Must determine whether the agency has identified individuals, in~~  
15                  ~~addition to the child's siblings, who are important to the child and will~~  
16                  ~~maintain caring, permanent relationships with the child, consistent with~~  
17                  ~~the child's best interest;~~  
18

19                  ~~(B) — Must determine whether the agency has made reasonable efforts to~~  
20                  ~~nurture and maintain the child's relationships with those individuals,~~  
21                  ~~consistent with the child's best interest; and~~  
22

23                  ~~(C) — May make any appropriate order to ensure that those relationships are~~  
24                  ~~maintained.~~  
25

26                  ~~(4) — The court must direct the county child welfare agency and the appropriate~~  
27                  ~~county or state adoption agency to prepare an assessment under section~~  
28                  ~~366.21(i), 366.22(c), or 366.25(b);~~  
29

30                  ~~(5)(1)~~ The court must ensure that notice is provided as follows:  
31

32                  (A) Within 24 hours of the review hearing, the clerk of the court must  
33                  provide notice by first-class mail to the last known address of any party  
34                  who is not present at the review hearing. The notice must include the  
35                  advisements required by rule 5.590(b).  
36

37                  (B) The court must order that notice of the hearing under section 366.26 not  
38                  be provided to any of the following:  
39

40                         (i) Any parent—whether natural, presumed, biological, or alleged—  
41                         who has relinquished the child for adoption and whose  
42                         relinquishment has been accepted and filed with notice under  
43                         Family Code section 8700; or

- 1  
2 (ii) An alleged parent who has denied parentage and has completed  
3 item 2 of *Statement Regarding Parentage (Juvenile)* (form JV-  
4 505).

5  
6 ~~(6)(2)~~ The court must follow all procedures in rule 5.590 regarding writ petition  
7 rights, advisements, and forms.  
8

9 ~~(e)(j)~~ **Appeal of order setting section 366.26 hearing**

10  
11 An appeal of any order setting a hearing under section 366.26 must follow the  
12 procedures in rules 8.400–8.416.  
13

14 **Rule 5.710. Six-month review hearing**

15  
16 ~~(a)~~ **Setting 6-month review; notice (§§ 364, 366, 366.21)**

17  
18 ~~The case of any dependent child whom the court has removed from the custody of~~  
19 ~~the parent or legal guardian under section 361 or 361.5 must be set for a review~~  
20 ~~hearing within 6 months of the date of the dispositional hearing, but no later than~~  
21 ~~12 months from the date the child entered foster care, as defined by section 361.49,~~  
22 ~~whichever occurs earlier. Notice must be provided as described in section 293 and~~  
23 ~~rule 5.708.~~  
24

25 ~~(b)~~**(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)**

26  
27 At the hearing, the court and all parties must comply with all relevant requirements  
28 and procedures in rule 5.708, General review hearing requirements. The court must  
29 make all appropriate findings and orders specified in rule 5.708 and proceed under  
30 section 366.21(e) and as follows:  
31

- 32 (1) *Order return of the child or find that return would be detrimental*

33  
34 ~~The court must order the child returned to the custody of the parent or legal~~  
35 ~~guardian unless the court finds that the petitioner has established by a~~  
36 ~~preponderance of the evidence that return would create a substantial risk of~~  
37 ~~detriment to the safety, protection, or physical or emotional well-being of the~~  
38 ~~child. The requirements in rule 5.708(d) must be followed in establishing~~  
39 ~~detriment. The requirements in rule 5.708(e) must be followed in entering a~~  
40 ~~reasonable services finding. If the child is returned, the court may order the~~  
41 ~~termination of dependency jurisdiction or order continued dependency~~  
42 ~~services and set a review hearing within 6 months.~~  
43

1 (2) *Place with noncustodial parent*

2

3 If the court has previously placed or at this hearing places the child with a  
4 noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)  
5 and section 361.2.

6

7 (3) *Set a section 366.26 hearing*

8

9 If the court does not return custody of the child, the court may set a hearing  
10 under section 366.26 within 120 days, as provided in (c).

11

12 (4) *Continue the case for a 12-month permanency hearing*

13

14 If the child is not returned and the court does not set a section 366.26 hearing,  
15 the court must order that any reunification services previously ordered will  
16 continue to be offered to the parent or legal guardian, if appropriate. The  
17 court may modify those services as appropriate or order additional services  
18 reasonably believed to facilitate the return of the child to the parent or legal  
19 guardian. The court must set a date for the next hearing no later than 12  
20 months from the date the child entered foster care.

21

22 **(e)(b) Setting a section 366.26 hearing (§§ 366.21, 366.215)**

23

24 (1) The court may set a hearing under section 366.26 within 120 days if any of  
25 the conditions in section 366.21(e) are met or ÷

26

27 ~~(A) The child was removed under section 300(g) and the court finds by~~  
28 ~~clear and convincing evidence that the parent's whereabouts are still~~  
29 ~~unknown, or the parent has failed to contact and visit the child, or the~~  
30 ~~parent has been convicted of a felony indicating parental unfitness. The~~  
31 ~~court must take into account any particular barriers to a parent's ability~~  
32 ~~to maintain contact with his or her child due to the parent's~~  
33 ~~incarceration or institutionalization;~~

34

35 ~~(B) The court finds by clear and convincing evidence that the parent has~~  
36 ~~been convicted of a felony indicating parental unfitness;~~

37

38 ~~(C) The parent is deceased, ÷ or~~

39

40 ~~(D) The child was under the age of three when initially removed, or a~~  
41 ~~member of a sibling group described in section 361.5(a)(1)(C), and the~~  
42 ~~court finds by clear and convincing evidence that the parent has failed~~  
43 ~~to participate regularly and make substantive progress in any court-~~

1 ordered treatment plan. If, however, the court finds a substantial  
2 probability that the child may be returned within 6 months or within 12  
3 months of the date the child entered foster care, whichever is sooner, or  
4 that reasonable services have not been offered or provided, the court  
5 must continue the case to the 12-month permanency hearing.  
6

7 (i) — In order to find a substantial probability that the child may be  
8 returned within the applicable time period, the court should  
9 consider the following factors along with any other relevant  
10 evidence:

11  
12 a. — Whether the parent or legal guardian has consistently and  
13 regularly contacted and visited the child;

14  
15 b. — Whether the parent or legal guardian has made significant  
16 progress in resolving the problems that led to the removal  
17 of the child; and

18  
19 c. — Whether the parent or legal guardian has demonstrated the  
20 capacity and ability to complete the objectives of the  
21 treatment plan and to provide for the child's safety,  
22 protection, physical and emotional health, and special  
23 needs.  
24

25 (ii) — The court, in determining whether court-ordered services may be  
26 extended to the 12-month point, must take into account any  
27 particular barriers to a parent's or guardian's ability to maintain  
28 contact with his or her child due to the parent's or guardian's  
29 incarceration, institutionalization, detention by the United States  
30 Department of Homeland Security, or deportation. The court may  
31 also consider, among other factors, whether the incarcerated,  
32 institutionalized, detained, or deported parent or guardian has  
33 made good faith efforts to maintain contact with the child and  
34 whether there are any other barriers to the parent's or guardian's  
35 access to services.  
36

37 (2) At the hearing, the court and all parties must comply with all relevant  
38 requirements and procedures related to section 366.26 hearings in rule 5.708,  
39 General review hearing requirements. The court must make all appropriate  
40 findings and orders specified in rule 5.708.

41  
42 **(d) — Sibling groups (§ 366.21)**  
43

1 In determining whether to set a hearing under section 366.26 for one or more  
2 members of a sibling group when one member of that group was under the age of  
3 three at the time of the initial removal, the court may terminate or continue services  
4 for any or all members of the group, based on the following considerations and for  
5 reasons specified on the record:

- 6
- 7 (1) ~~Whether the siblings were removed as a group;~~
  - 8
  - 9 (2) ~~The closeness and strength of the sibling bond;~~
  - 10
  - 11 (3) ~~The ages of the siblings;~~
  - 12
  - 13 (4) ~~The appropriateness of maintaining the sibling group together;~~
  - 14
  - 15 (5) ~~The detriment to the child if sibling ties are not maintained;~~
  - 16
  - 17 (6) ~~The likelihood of finding a permanent home for the group;~~
  - 18
  - 19 (7) ~~Whether the group is placed together in a preadoptive home, if there is a~~  
20 ~~concurrent plan for permanency for all siblings in the same home;~~
  - 21
  - 22 (8) ~~The wishes of each child; and~~
  - 23
  - 24 (9) ~~The best interest of each member of the sibling group.~~

25 -  
26 **Rule 5.715. Twelve-month permanency hearing**

27  
28 **(a) Requirement for 12-month review; setting of hearing; notice (§§ 293, 366.21)**

29  
30 The case of any dependent child whom the court has removed from the custody of  
31 the parent or legal guardian must be set for a permanency hearing within 12 months  
32 of the date the child entered foster care, as defined in section 361.49, and no later  
33 than 18 months from the date of the initial removal. ~~Notice of the hearing must be~~  
34 ~~provided as described in section 293 and rule 5.708.~~

35  
36 **(b) Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**

37  
38 At the hearing, the court and all parties must comply with all relevant requirements  
39 and procedures in rule 5.708, General review hearing requirements. The court must  
40 make all appropriate findings and orders specified in rule 5.708 and proceed under  
41 section 366.21(f) and as follows:  
42

1           ~~(1) The court must order the child returned to the custody of the parent or legal~~  
2           ~~guardian unless the court finds the petitioner has established, by a~~  
3           ~~preponderance of the evidence, that return would create a substantial risk of~~  
4           ~~detriment to the safety, protection, or physical or emotional well-being of the~~  
5           ~~child. Failure of the parent or legal guardian to regularly participate and make~~  
6           ~~substantive progress in a court-ordered treatment program is prima facie~~  
7           ~~evidence that return would be detrimental. The requirements in rule 5.708(d)~~  
8           ~~must be followed in establishing detriment.~~

9  
10          ~~(2)(1) The requirements in rule 5.708(e)(c) must be followed in entering a~~  
11          ~~reasonable services finding.~~

12  
13          ~~(3)(2) If the court has previously placed or at this hearing places the child with a~~  
14          ~~noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)~~  
15          ~~and section 361.2.~~

16  
17          ~~(4)(3) If the court does not order return of the child to the parent or legal guardian~~  
18          ~~and the time period for providing court-ordered services has been met or~~  
19          ~~exceeded, as provided in section 361.5(a)(1), the court must specify the~~  
20          ~~factual basis for its finding of risk of detriment to the child and proceed as~~  
21          ~~follows in selecting a permanent plan:~~

22  
23                 ~~(A) If the court finds that there is a substantial probability that the child will~~  
24                 ~~be returned within 18 months or that reasonable services have not been~~  
25                 ~~offered or provided, the court must continue the case for a permanency~~  
26                 ~~review hearing to a date not later than 18 months from the date of the~~  
27                 ~~initial removal. If the court continues the case for an 18-month~~  
28                 ~~permanency review hearing, the court must inform the parent or legal~~  
29                 ~~guardian that if the child cannot be returned home by the next hearing,~~  
30                 ~~a proceeding under section 366.26 may be instituted.~~

31  
32                         ~~(i) In order to find a substantial probability that the child will be~~  
33                         ~~returned within the 18-month period, the court must find all of~~  
34                         ~~the following:~~

35  
36                                 ~~a. The parent or legal guardian has consistently and regularly~~  
37                                 ~~contacted and visited the child;~~

38  
39                                 ~~b. The parent or legal guardian has made significant progress in~~  
40                                 ~~resolving the problems that led to the removal of the child;~~  
41                                 ~~and~~

1 e. ~~The parent or legal guardian has demonstrated the capacity~~  
2 ~~and ability to complete the objectives of the treatment plan~~  
3 ~~and to provide for the child's safety, protection, physical~~  
4 ~~and emotional health, and special needs.~~

5  
6 (ii) ~~In determining whether court-ordered services may be extended~~  
7 ~~to the 18-month point, the court must consider the special~~  
8 ~~circumstances of a parent or legal guardian who is incarcerated,~~  
9 ~~institutionalized or court-ordered to a residential substance abuse~~  
10 ~~treatment program, or arrested and issued an immigration hold,~~  
11 ~~detained by the United States Department of Homeland Security,~~  
12 ~~or deported to his or her country of origin, including, but not~~  
13 ~~limited to, barriers to the parent's or legal guardian's access to~~  
14 ~~services and ability to maintain contact with his or her child. The~~  
15 ~~court must also consider, among other factors, good faith efforts~~  
16 ~~that the parent or legal guardian has made to maintain contact~~  
17 ~~with the child.~~

18  
19 (B) ~~If (1), (4)(A), or (4)(C) do not apply, the court must terminate~~  
20 ~~reunification services and order a hearing under section 366.26 within~~  
21 ~~120 days. The court and all parties must comply with all relevant~~  
22 ~~requirements, procedures, findings, and orders related to section 366.26~~  
23 ~~hearings in rule 5.708.~~

24  
25 (C) ~~If the court finds by clear and convincing evidence, including a~~  
26 ~~recommendation by the appropriate state or county adoption agency,~~  
27 ~~that there is a compelling reason for determining that a section 366.26~~  
28 ~~hearing is not in the best interest of the child because the child is not a~~  
29 ~~proper subject for adoption and has no one willing to accept legal~~  
30 ~~guardianship:~~

31  
32 (i) ~~The court must terminate reunification services and order that the~~  
33 ~~child remain in a planned permanent living arrangement.~~

34  
35 (ii) ~~If the court orders that the child remain in a planned permanent~~  
36 ~~living arrangement, it must identify the foster care setting by~~  
37 ~~name and identify a specific permanency goal for the child.~~

38  
39 (iii) ~~The court may order that the name and address of the foster home~~  
40 ~~remain confidential.~~

1 (iv) ~~The court must continue to permit the parent or legal guardian to~~  
2 ~~visit the child, unless it finds that visitation would be detrimental~~  
3 ~~to the child.~~

4  
5 (v) ~~If the child is 10 years of age or older and is placed in out-of-~~  
6 ~~home placement for six months or longer, the court must enter~~  
7 ~~any other appropriate orders to enable the child to maintain~~  
8 ~~relationships with other individuals who are important to the~~  
9 ~~child, consistent with the child's best interest. Specifically, the~~  
10 ~~court:~~

11  
12 a. ~~Must determine whether the agency has identified~~  
13 ~~individuals, in addition to the child's siblings, who are~~  
14 ~~important to the child and will maintain caring, permanent~~  
15 ~~relationships with the child, consistent with the child's best~~  
16 ~~interest;~~

17  
18 b. ~~Must determine whether the agency has made reasonable~~  
19 ~~efforts to nurture and maintain the child's relationships~~  
20 ~~with those individuals, consistent with the child's best~~  
21 ~~interest; and~~

22  
23 e. ~~May make any appropriate order to ensure that those~~  
24 ~~relationships are maintained.~~

25  
26 ~~(5)(3)~~ If the child is not returned to his or her parent or legal guardian, the court  
27 must consider and state, for the record, in state and out of state options for  
28 permanent placement, including, in the case of an Indian child, determine  
29 whether:

30  
31 (A) The agency has consulted the child's tribe about tribal customary  
32 adoption;

33  
34 (B) The child's tribe concurs with tribal customary adoption; and

35  
36 (C) Tribal customary adoption is an appropriate permanent plan for the  
37 child.

38  
39 (4) If the child is not returned to his or her parent or legal guardian and the court  
40 terminates reunification services, the court must find as follows:

41  
42 (A) The agency has made diligent efforts to locate an appropriate relative;  
43 or

1  
2           (B) The agency has not made diligent efforts to locate an appropriate  
3 relative. If the court or administrative review panel makes such a  
4 finding, the court or administrative review panel must order the agency  
5 to make diligent efforts to locate an appropriate relative; and

6  
7           (C) Each relative whose name has been submitted to the agency as a  
8 possible caregiver has been evaluated as an appropriate placement  
9 resource; or

10  
11           (D) Each relative whose name has been submitted to the agency as a  
12 possible caregiver has not been evaluated as an appropriate placement  
13 resource. If the court or administrative review panel makes such a  
14 finding, the court or administrative review panel must order the agency  
15 to evaluate as an appropriate placement resource, each relative whose  
16 name has been submitted to the agency as a possible caregiver.

17  
18 **Rule 5.720. Eighteen-month permanency review hearing**

19  
20 **~~(a) — Requirement for 18-month permanency review hearing; setting of hearing;~~**  
21 **~~notice (§§ 293, 366.22)~~**

22  
23 ~~For any dependent child whom the court has removed from the custody of the~~  
24 ~~parent or legal guardian, and who was not returned at the 6- or 12-month review~~  
25 ~~hearing, a permanency review hearing must be held no later than 18 months from~~  
26 ~~the date of the initial removal. Notice of the hearing must be given as provided in~~  
27 ~~section 293 and rule 5.708(b).~~

28  
29 **~~(b)~~(a) Determinations and conduct of hearing (§§ 361.5, 366.22)**

30  
31 At the hearing the court and all parties must comply with all relevant requirements  
32 and procedures in rule 5.708, General review hearing requirements. The court must  
33 make all appropriate findings and orders specified in rule 5.708, and proceed under  
34 section 366.22 and as follows:

35  
36 (1) ~~The court must order the child returned to the custody of the parent or legal~~  
37 ~~guardian unless the court finds the petitioner has established, by a~~  
38 ~~preponderance of the evidence, that return would create a substantial risk of~~  
39 ~~detriment to the safety, protection, or physical or emotional well-being of the~~  
40 ~~child. Failure of the parent or legal guardian to regularly participate and make~~  
41 ~~substantive progress in a court-ordered treatment program is prima facie~~  
42 ~~evidence that continued supervision is necessary or that return would be~~  
43 ~~detrimental. The requirements in rule 5.708(d) must be followed in~~

1            ~~establishing detriment. The requirements in rule 5.708(e) must be followed in~~  
2            ~~entering a reasonable services finding.~~

3  
4            ~~(2)(1) If the court has previously placed or at this hearing places the child with a~~  
5            ~~noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)~~  
6            ~~and section 361.2.~~

7  
8            ~~(3)(2) If the court does not order return of the child to the custody of the parent or~~  
9            ~~legal guardian, the court must specify the factual basis for its finding of risk~~  
10           ~~of detriment and do one of the following:~~

11  
12           ~~(A) — Continue the case for a subsequent permanency review hearing not~~  
13           ~~later than 24 months from the date of the initial removal if the court~~  
14           ~~finds that there is a substantial probability that the child will be~~  
15           ~~returned within that time or that reasonable services have not been~~  
16           ~~offered or provided. To extend services to the 24-month point, the court~~  
17           ~~must also find by clear and convincing evidence that additional~~  
18           ~~reunification services are in the best interest of the child and that the~~  
19           ~~parent or legal guardian is making significant and consistent progress in~~  
20           ~~a substance abuse treatment program, or a parent or legal guardian has~~  
21           ~~recently been discharged from incarceration, institutionalization, or the~~  
22           ~~custody of the United States Department of Homeland Security and is~~  
23           ~~making significant and consistent progress in establishing a safe home~~  
24           ~~for the child's return. The court must also inform the parent or legal~~  
25           ~~guardian that, if the child cannot be returned home by the subsequent~~  
26           ~~permanency review hearing, a hearing under section 366.26 may be~~  
27           ~~instituted.~~

28  
29           ~~In order to find a substantial probability that the child will be returned~~  
30           ~~within the 24-month period, the court must find all of the following:~~

31  
32           ~~(i) — The parent or legal guardian has consistently and regularly~~  
33           ~~contacted and visited the child;~~

34  
35           ~~(ii) — The parent or legal guardian has made significant and consistent~~  
36           ~~progress in the prior 18 months in resolving the problems that led~~  
37           ~~to the removal of the child; and~~

38  
39           ~~(iii) — The parent or legal guardian has demonstrated the capacity and~~  
40           ~~ability both to complete the objectives of his or her substance~~  
41           ~~abuse treatment plan as evidenced by reports from a substance~~  
42           ~~abuse provider, as applicable, or to complete a treatment plan~~  
43           ~~postdischarge from incarceration, institutionalization, or~~

1                   detention or following deportation to his or her country of origin  
2                   or his or her return to the United States, and to provide for the  
3                   child's safety, protection, physical and emotional health, and  
4                   special needs.  
5

6                   (B) — ~~Terminate reunification services and order that the child remain in a  
7                   planned permanent living arrangement, if it finds by clear and  
8                   convincing evidence already presented, including a recommendation by  
9                   the appropriate state or county adoption agency, that there is a  
10                  compelling reason for determining that a section 366.26 hearing is not  
11                  in the best interest of the child because the child is not a proper subject  
12                  for adoption and has no one willing to accept legal guardianship.~~

13  
14                  (i) — ~~If the court orders that the child remain in a planned permanent  
15                  living arrangement, it must identify the foster care setting by  
16                  name and identify a specific permanency goal for the child.~~

17  
18                  (ii)    The court may order that the name and address of the foster home  
19                  remain confidential.  
20

21                  (iii) — ~~The court must continue to permit the parent or legal guardian to  
22                  visit the child, unless it finds that visitation would be detrimental  
23                  to the child;~~

24  
25                  (iv) — ~~If the child is 10 years of age or older and is placed in out-of-  
26                  home placement for six months or longer, the court must enter  
27                  any other appropriate orders to enable the child to maintain  
28                  relationships with other individuals who are important to the  
29                  child, consistent with the child's best interest. Specifically, the  
30                  court:~~

31  
32                   a. — ~~Must determine whether the agency has identified  
33                   individuals, in addition to the child's siblings, who are  
34                   important to the child and will maintain caring, permanent  
35                   relationships with the child, consistent with the child's best  
36                   interest;~~

37  
38                   b. — ~~Must determine whether the agency has made reasonable  
39                   efforts to nurture and maintain the child's relationships  
40                   with those individuals, consistent with the child's best  
41                   interest; and  
42~~

1 e. ~~May make any appropriate order to ensure that those~~  
2 ~~relationships are maintained.~~

3  
4 ~~(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate~~  
5 ~~reunification services and order a hearing under section 366.26 within~~  
6 ~~120 days. The court and all parties must comply with all relevant~~  
7 ~~requirements, procedures, and findings and orders related to section~~  
8 ~~366.26 hearings in rule 5.708.~~

9  
10 ~~(4)(3) If the child is not returned to his or her parent or legal guardian, the court~~  
11 ~~must consider and state, for the record, in state and out of state options for~~  
12 ~~permanent placement, including, in the case of an Indian child, determine~~  
13 ~~whether:~~

14  
15 (A) The agency has consulted the child's tribe about tribal customary  
16 adoption;

17  
18 (B) The child's tribe concurs with tribal customary adoption; and

19  
20 (C) Tribal customary adoption is an appropriate permanent plan for the  
21 child.

22  
23 ~~(4) If the child is not returned to his or her parent or legal guardian and the court~~  
24 ~~terminates reunification services, the court must find as follows:~~

25  
26 ~~(A) The agency has made diligent efforts to locate an appropriate relative;~~  
27 ~~or~~

28  
29 ~~(B) The agency has not made diligent efforts to locate an appropriate~~  
30 ~~relative. If the court makes such a finding, the court must order the~~  
31 ~~agency to make diligent efforts to locate an appropriate relative; and~~

32  
33 ~~(C) Each relative whose name has been submitted to the agency as a~~  
34 ~~possible caregiver has been evaluated as an appropriate placement~~  
35 ~~resource; or~~

36  
37 ~~(D) Each relative whose name has been submitted to the agency as a~~  
38 ~~possible caregiver has not been evaluated as an appropriate placement~~  
39 ~~resource. If the court makes such a finding, the court or administrative~~  
40 ~~review panel must order the agency to evaluate as an appropriate~~  
41 ~~placement resource, each relative whose name has been submitted to~~  
42 ~~the agency as a possible caregiver.~~

1  
2 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

3  
4 ~~(a) — Requirement for 24-month subsequent permanency review hearing; setting of~~  
5 ~~hearing; notice (§ 366.25)~~  
6

7 For any dependent child whom the court has removed from the custody of the  
8 parent or legal guardian, and whose case has been continued under section  
9 366.22(b), the subsequent permanency review hearing must be held no later than 24  
10 months from the date of initial removal. Notice must be provided as described in  
11 rule 5.708.  
12

13 ~~(b)(a) Determinations and Conduct of hearing (§ 366, 366.1, 366.25)~~  
14

15 At the hearing, the court and all parties must comply with all relevant requirements  
16 and procedures in rule 5.708, General review hearing requirements. The court must  
17 make all appropriate findings and orders specified in rule 5.708, and proceed under  
18 section 366.25 and as follows:  
19

20 (1) ~~The court must order the child returned to the custody of the parent or legal~~  
21 ~~guardian unless the court finds that petitioner has established by a~~  
22 ~~preponderance of the evidence that return would create a substantial risk of~~  
23 ~~detriment to the safety, protection, or physical or emotional well being of the~~  
24 ~~child. Failure of the parent or legal guardian to regularly participate and make~~  
25 ~~substantive progress in a court ordered treatment program is prima facie~~  
26 ~~evidence that return would be detrimental. The requirements in rule 5.708(d)~~  
27 ~~must be followed in establishing detriment. The requirements in rule~~  
28 ~~5.708(e)(c) must be followed in entering a reasonable services finding.~~  
29

30 (2) If the court does not order the return of the child to the custody of the parent  
31 or legal guardian, the court must specify the factual basis for its finding of  
32 risk of detriment ~~and do one of the following:~~  
33

34 (A) ~~If the court finds by clear and convincing evidence, including a~~  
35 ~~recommendation by the appropriate state or county adoption agency,~~  
36 ~~that there is a compelling reason for determining that a section 366.26~~  
37 ~~hearing is not in the best interest of the child because the child is not a~~  
38 ~~proper subject for adoption and has no one willing to accept legal~~  
39 ~~guardianship, the court must terminate reunification services and order~~  
40 ~~that the child remain in a planned permanent living arrangement.~~  
41

1 (i) ~~If the court orders that the child remain in a planned permanent~~  
2 ~~living arrangement, it must identify the foster care setting by~~  
3 ~~name and identify a specific permanency goal for the child.~~

4  
5 (ii)(3) The court may order that the name and address of the foster  
6 home remain confidential.

7  
8 (iii) ~~The court must continue to permit the parent or legal guardian to~~  
9 ~~visit the child, unless it finds that visitation would be detrimental~~  
10 ~~to the child.~~

11  
12 (iv) ~~If the child is 10 years of age or older and is placed in out-of-~~  
13 ~~home placement for six months or longer, the court must enter~~  
14 ~~any other appropriate orders to enable the child to maintain~~  
15 ~~relationships with other individuals who are important to the~~  
16 ~~child, consistent with the child's best interest. Specifically, the~~  
17 ~~court:~~

18  
19 a. ~~Must determine whether the agency has identified~~  
20 ~~individuals, in addition to the child's siblings, who are~~  
21 ~~important to the child and will maintain caring, permanent~~  
22 ~~relationships with the child, consistent with the child's best~~  
23 ~~interest;~~

24  
25 b. ~~Must determine whether the agency has made reasonable~~  
26 ~~efforts to nurture and maintain the child's relationships~~  
27 ~~with those individuals, consistent with the child's best~~  
28 ~~interest; and~~

29  
30 c. ~~May make any appropriate order to ensure that those~~  
31 ~~relationships are maintained.~~

32  
33 (B) ~~If (1) or (2)(A) do not apply, the court must terminate reunification~~  
34 ~~services and order that a hearing be held under section 366.26 within~~  
35 ~~120 days. The court and all parties must comply with all relevant~~  
36 ~~requirements, procedures, findings, and orders related to section 366.26~~  
37 ~~hearings in rule 5.708(f) (e). (h)-(j).~~

38  
39 (3) If the child is not returned to his or her parent or legal guardian, the court  
40 must consider and state, for the record, in-state and out-of-state options for  
41 permanent placement, including, in the case of an Indian child, determine  
42 whether:  
43

- 1 (A) The agency has consulted the child’s tribe about tribal customary  
2 adoption;  
3  
4 (B) The child’s tribe concurs with tribal customary adoption; and  
5  
6 (C) Tribal customary adoption is an appropriate permanent plan for the  
7 child.  
8  
9 (4) If the child is not returned to his or her parent or legal guardian and the court  
10 terminates reunification services, the court must find as follows:  
11  
12 (A) The agency has made diligent efforts to locate an appropriate relative;  
13 or  
14  
15 (B) The agency has not made diligent efforts to locate an appropriate  
16 relative. If the court or administrative review panel makes such a  
17 finding, the court must order the agency to make diligent efforts to  
18 locate an appropriate relative; and  
19  
20 (C) Each relative whose name has been submitted to the agency as a  
21 possible caregiver has been evaluated as an appropriate placement  
22 resource; or  
23  
24 (D) Each relative whose name has been submitted to the agency as a  
25 possible caregiver has not been evaluated as an appropriate placement  
26 resource. If the court makes such a finding, the court or administrative  
27 review panel must order the agency to evaluate as an appropriate  
28 placement resource, each relative whose name has been submitted to  
29 the agency as a possible caregiver.  
30

31 **Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**  
32

33 **(a) Application of rule**  
34

35 This rule applies to children who have been declared dependents or wards of the  
36 juvenile court.  
37

- 38 ~~(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with~~  
39 ~~section 7660) of the Family Code or Family Code sections 8604, 8605, 8606,~~  
40 ~~and 8700 apply for the termination of parental rights. Part 4 (commencing~~  
41 ~~with section 7800) of division 12 of the Family Code does not apply.~~  
42

1           ~~(2)~~(1) The court may not terminate the rights of only one parent under section  
2           366.26 unless that parent is the only surviving parent; or unless the rights of  
3           the other parent have been terminated under division 12, part 3, chapter 5  
4           (commencing with section 7660), or division 12, part 4 (commencing with  
5           section 7800) of the Family Code, or Family Code sections 8604, 8605, or  
6           8606; or unless the other parent has relinquished custody of the child to the  
7           welfare department.

8  
9           ~~(3)~~(2) Only section 366.26 and 727.31 apply ~~applies~~ for establishing legal  
10          guardianship.

11  
12          ~~(4)~~(3) For termination of the parental rights of an Indian child, the procedures in  
13          this rule and in rule 5.485 must be followed.

14  
15  
16       **(b) Notice of hearing (§ 294)**

17  
18       In addition to the requirements stated in section 294, notice must be given to any  
19       CASA volunteer, the child's present caregiver, and any de facto parent on *Notice of*  
20       *Hearing on Selection of a Permanent Plan* (form JV-300).

21  
22       **(c) Report**

23  
24       Before the hearing, petitioner must prepare an assessment under section 366.21(i).  
25       At least 10 calendar days before the hearing, the petitioner must file the assessment,  
26       provide copies to each parent or guardian and all counsel of record, and provide a  
27       summary of the recommendations to the present custodians of the child, to any  
28       CASA volunteer, and to the tribe of an Indian child.

29  
30       **(d) Conduct of hearing**

31  
32       At the hearing, the court must state on the record that the court has read and  
33       considered the report of petitioner, the report of any CASA volunteer, the case plan  
34       submitted for this hearing, any report submitted by the child's caregiver under  
35       section 366.21(d), and any other evidence, and must proceed under section 366.26  
36       and as follows:

37  
38       (1) In the case of an Indian child, after the agency has consulted with the tribe,  
39       when the court has determined with the concurrence of the tribe that tribal  
40       customary adoption is the appropriate permanent plan for the child, order a  
41       tribal customary adoption in accordance with section 366.24. ~~;~~ ~~or~~  
42

1           (2) ~~Order parental rights terminated and the child placed for adoption if the court~~  
2 ~~determines, by clear and convincing evidence, that it is likely the child will~~  
3 ~~be adopted, unless:~~

4  
5           (A) ~~At each and every hearing at which the court was required to consider~~  
6 ~~reasonable efforts or services, the court has found that reasonable~~  
7 ~~efforts were not made or that reasonable services were not offered or~~  
8 ~~provided; or~~

9  
10          (B) ~~The child is living with a relative who is unable or unwilling to adopt~~  
11 ~~the child because of circumstances that do not include an unwillingness~~  
12 ~~to accept legal or financial responsibility for the child, but who is~~  
13 ~~willing and capable of providing the child with a stable and permanent~~  
14 ~~environment through legal guardianship, and removal from the home of~~  
15 ~~the relative would be detrimental to the emotional well-being of the~~  
16 ~~child. For an Indian child, “relative” includes an “extended family~~  
17 ~~member,” as defined in the federal Indian Child Welfare Act (25 U.S.C.~~  
18 ~~§1903(2)); or~~

19  
20          (C) ~~The court finds a compelling reason to determine that termination~~  
21 ~~would be detrimental to the child because of the existence of one of the~~  
22 ~~following circumstances:~~

23  
24           (i) ~~The parents or guardians have maintained regular visitation and~~  
25 ~~contact with the child and the child would benefit from~~  
26 ~~continuing the relationship;~~

27  
28           (ii) ~~A child 12 years of age or older objects to termination of parental~~  
29 ~~rights;~~

30  
31           (iii) ~~The child is placed in a residential treatment facility and adoption~~  
32 ~~is unlikely or undesirable while the child remains in that~~  
33 ~~placement, and continuation of parental rights will not prevent~~  
34 ~~the finding of an adoptive home if the parents cannot resume~~  
35 ~~custody when residential care is no longer needed;~~

36  
37           (iv) ~~The child is living with a foster parent or Indian custodian who is~~  
38 ~~unable or unwilling to adopt the child because of exceptional~~  
39 ~~circumstances, but who is willing and capable of providing the~~  
40 ~~child with a stable and permanent home, and removal from the~~  
41 ~~home of the foster parent or Indian custodian would be~~  
42 ~~detrimental to the emotional well-being of the child. This~~  
43 ~~exception does not apply to (1) a child under 6 or (2) a child who~~

1 has a sibling under 6 who is also a dependent and with whom the  
2 child should be placed permanently; or

3  
4 ~~(v) There would be a substantial interference with the child's~~  
5 ~~relationship with a sibling, taking into consideration the nature~~  
6 ~~and extent of the relationship. To make this determination, the~~  
7 ~~court may consider whether the child was raised in the same~~  
8 ~~home as the sibling, whether the child and the sibling shared~~  
9 ~~common experiences or have close and strong bonds, and~~  
10 ~~whether ongoing contact with the sibling is in the child's best~~  
11 ~~interest. For purposes of this subdivision, determination of the~~  
12 ~~child's best interest may include a comparison of the child's~~  
13 ~~long-term emotional interest with the benefit of legal permanency~~  
14 ~~in an adoptive home.~~

15  
16 ~~(vi) The child is an Indian child and termination of parental rights~~  
17 ~~would substantially interfere with the child's connection to his or~~  
18 ~~her tribal community or the child's tribal membership rights, or~~  
19 ~~the child's tribe has identified guardianship, long-term foster care~~  
20 ~~with a fit and willing relative, tribal customary adoption, or~~  
21 ~~another planned permanent living arrangement as the appropriate~~  
22 ~~permanent plan for the child.~~

23  
24 ~~(3) The court must not fail to find that the child is likely to be adopted based on~~  
25 ~~the fact that the child is not yet placed in a preadoptive home or with a~~  
26 ~~relative or foster family willing to adopt the child.~~

27  
28 ~~(4)(2) The party claiming that termination of parental rights would be detrimental~~  
29 ~~to the child has the burden of proving the detriment.~~

30  
31 ~~(5) If the court finds termination of parental rights to be detrimental to the child~~  
32 ~~for reasons stated in (2)(B), the court must state the reasons in writing or on~~  
33 ~~the record.~~

34  
35 ~~(6) If termination of parental rights would not be detrimental to the child, but the~~  
36 ~~child is difficult to place for adoption because the child (1) is a member of a~~  
37 ~~sibling group that should stay together; (2) has a diagnosed medical, physical,~~  
38 ~~or mental handicap; or (3) is 7 years of age or older and no prospective~~  
39 ~~adoptive parent is identified or available, the court may, without terminating~~  
40 ~~parental rights, identify adoption as a permanent placement goal and order~~  
41 ~~the public agency responsible for seeking adoptive parents to make efforts to~~  
42 ~~locate an appropriate adoptive family for a period not to exceed 180 days.~~  
43 ~~During the 180-day period, in order to identify potential adoptive parents, the~~

1 agency responsible for seeking adoptive parents for each child must, to the  
2 extent possible, ask each child who is 10 years of age or older and who is  
3 placed in out of home placement for six months or longer to identify any  
4 individuals who are important to the child. The agency may ask any other  
5 child to provide that information, as appropriate. After that period the court  
6 must hold another hearing and proceed according to (1), (2), or (7).  
7

8 ~~(7)~~(3) If the court finds that (2)(A) or (2)(B) applies, the court must appoint the  
9 present custodian or other appropriate person to become the child's legal  
10 guardian or must order the child to remain in foster care.  
11

12 (A) ~~If the court orders that the child remain in foster care, it must identify~~  
13 ~~the foster care setting by name and identify a specific permanency goal~~  
14 ~~for the child. The court may order that the name and address of the~~  
15 ~~foster home remain confidential.~~  
16

17 ~~(B) Legal guardianship must be given preference over foster care when it is~~  
18 ~~in the interest of the child and a suitable guardian can be found.~~  
19

20 ~~(C) A child who is 10 years of age or older who is placed in a out of home~~  
21 ~~placement for six months or longer must be asked to identify any adults~~  
22 ~~who are important to him or her in order for the agency to investigate~~  
23 ~~and the court to determine whether any of those adults would be~~  
24 ~~appropriate to serve as legal guardians. Other children may be asked for~~  
25 ~~this information, as age and developmentally appropriate.~~  
26

27 ~~(D)~~(B) If the court finds that removal of the child from the home of a foster  
28 parent or relative who is not willing to become a legal guardian for the  
29 child would be seriously detrimental to the emotional well-being of the  
30 child, then the child must not be removed. The foster parent or relative  
31 must be willing to provide, and capable of providing, a stable and  
32 permanent home for the child and must have substantial psychological  
33 ties with the child.  
34

35 ~~(E) The court must make an order for visitation with each parent or~~  
36 ~~guardian unless the court finds by a preponderance of the evidence that~~  
37 ~~the visitation would be detrimental to the child.~~  
38

39 ~~(8)~~(4) The court must consider the case plan submitted for this hearing and must  
40 find as follows:  
41

42 (A) The child was actively involved in the development of his or her own  
43 case plan and plan for permanent placement as age and

1 developmentally appropriate, including being asked for a statement  
2 regarding his or her permanent placement plan, and the case plan  
3 contains the social worker's assessment of those stated wishes; or  
4

5 (B) The child was not actively involved in the development of his or her  
6 own case plan and plan for permanent placement, including being  
7 asked for a statement regarding his or her permanent placement plan  
8 and the case plan does not contain the social worker's assessment of  
9 those stated wishes. If the court makes such a finding, the court must  
10 order the agency to actively involve the child in the development of his  
11 or her own case plan and plan for permanent placement, including  
12 asking the child for a statement regarding his or her permanent plan,  
13 unless the court finds that the child is unable, unavailable, or unwilling  
14 to participate. If the court finds that the case plan does not contain the  
15 social worker's assessment of the child's stated wishes, the court must  
16 order the agency to submit the assessment to the court; and  
17

18 (C) In the case of an Indian child, the agency consulted with the child's  
19 tribe and the tribe was actively involved in the development of the case  
20 plan and plan for permanent placement, including consideration of  
21 whether tribal customary adoption is an appropriate permanent plan for  
22 the child if reunification is unsuccessful; or  
23

24 (D) In the case of an Indian child, the agency did not consult with the  
25 child's tribe. If the court makes such a finding, the court must order the  
26 agency to consult with the tribe, unless the court finds that the tribe is  
27 unable, unavailable, or unwilling to participate.  
28

29 ~~(9)~~(5) For a child 12 years of age or older and in a permanent placement, the court  
30 must consider the case plan and must find as follows:  
31

32 (A) The child was given the opportunity to review the case plan, sign it, and  
33 receive a copy; or  
34

35 (B) The child was not given the opportunity to review the case plan, sign it,  
36 and receive a copy. If the court makes such a finding, the court must  
37 order the agency to give the child the opportunity to review the case  
38 plan, sign it, and receive a copy.  
39

40 ~~(10)~~(6) If no adult is available to become legal guardian, and no suitable foster  
41 home is available, the court may order the care, custody, and control of the  
42 child transferred to a licensed foster family agency, subject to further orders  
43 of the court.

1  
2 **(e) Procedures—adoption**  
3

4 ~~(1) The court may not terminate parental rights or order adoption if a review of~~  
5 ~~the prior findings and orders reveals that at each and every prior hearing at~~  
6 ~~which the court was required to consider reasonable efforts or services the~~  
7 ~~court found that reasonable efforts had not been made or that reasonable~~  
8 ~~services had not been offered or provided. If at any prior hearing the court~~  
9 ~~found that reasonable efforts had been made or that reasonable services had~~  
10 ~~been offered or provided, the court may terminate parental rights.~~

11  
12 ~~(2)~~(1) An order of the court terminating parental rights, ordering adoption under  
13 section 366.26, or, in the case of an Indian child, ordering tribal customary  
14 adoption under section 366.24 is conclusive and binding on the child, the  
15 parent, and all other persons who have been served under the provisions of  
16 section 294. The order may not be set aside or modified by the court, except  
17 as provided in rules 5.538, 5.540, and 5.542 with regard to orders by a  
18 referee.

19  
20 ~~(3) If the court declares the child free from custody and control of the parents,~~  
21 ~~the court must at the same time order the child referred to a licensed county~~  
22 ~~adoption agency for adoptive placement. A petition for adoption of the child~~  
23 ~~may be filed and heard in the juvenile court but may not be granted until the~~  
24 ~~appellate rights of all parents have been exhausted.~~

25  
26 ~~(4)~~(2) In the case of an Indian child for whom tribal customary adoption has been  
27 ordered in accordance with section 366.24, the court may continue the  
28 hearing for up to 120 days to permit the tribe to complete the process for  
29 tribal customary adoption. In its discretion, the court may grant a further  
30 continuance not exceeding 60 days.

31  
32 (A) No less than 20 days before the date set for the continued hearing, the  
33 tribe must file the completed tribal customary adoption order with the  
34 court.

35  
36 (B) The social worker must file an addendum report with the court at least  
37 7 days before the hearing.

38  
39 (C) If the tribe does not file the tribal customary adoption order within the  
40 designated time period, the court must make new findings and orders  
41 under section 366.26(b) and select a new permanent plan for the child.  
42

1 **(f) Procedures—legal guardianship**

2  
3 The proceedings for appointment of a legal guardian for a dependent child of the  
4 juvenile court must be in the juvenile court as provided in rule 5.735.

5  
6 **(g) Purpose of termination of parental rights**

7  
8 The purpose of termination of parental rights is to free the child for adoption.  
9 Therefore, the court must not terminate the rights of only one parent unless that  
10 parent is the only surviving parent, or the rights of the other parent have been  
11 terminated by a California court of competent jurisdiction or by a court of  
12 competent jurisdiction of another state under the statutes of that state, or the other  
13 parent has relinquished custody of the child to the county welfare department. The  
14 rights of all parents—whether natural, presumed, biological, alleged, or unknown—  
15 must be terminated in order to free the child for adoption.

16  
17 **(h) Advisement of appeal rights**

18  
19 The court must advise all parties of their appeal rights as provided in rule 5.585 and  
20 section 366.26(1).

21  
22 **Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))**

23  
24 **(a) Request procedure**

25  
26 A dependent child’s caregiver may be designated as a prospective adoptive parent.  
27 The court may make the designation on its own motion or on a request by a  
28 caregiver, the child, a social worker, the child’s identified Indian tribe, or the  
29 attorney for any of these parties.

- 30  
31 (1) A request for designation as a prospective adoptive parent may be made at a  
32 hearing where parental rights are terminated or a plan of tribal customary  
33 adoption is ordered or thereafter, whether or not the child’s removal from the  
34 home of the prospective adoptive parent is at issue.  
35  
36 (2) A request may be made orally.  
37  
38 (3) If a request for prospective adoptive parent designation is made in writing, it  
39 must be made on *Request for Prospective Adoptive Parent Designation* (form  
40 JV-321).  
41  
42 (4) The address and telephone number of the caregiver and the child may be kept  
43 confidential by filing *Confidential Information—Prospective Adoptive Parent*

(form JV-322), with form JV-321. Form JV-322 must be kept in the court file under seal, and only the court, the child’s attorney, the agency, and the child’s CASA volunteer may have access to this information.

**(b) ~~Criteria for designation as prospective adoptive parent~~ Facilitation steps**

~~A caregiver must meet the following criteria to be designated as a prospective adoptive parent:~~

- ~~(1) — The child has lived with the caregiver for at least six months;~~
- ~~(2) — The caregiver currently expresses a commitment to adopt the child; and~~
- ~~(3) — The caregiver has taken at least one step to facilitate the adoption process. Steps to facilitate the adoption process include: those listed in 366.26(n)(2) and in
  - ~~(A) — Applying for an adoption home study;~~
  - ~~(B) — Cooperating with an adoption home study;~~
  - ~~(C) — Being designated by the court or the licensed adoption agency as the adoptive family;~~
  - ~~(D) — In the case of an Indian child when tribal customary adoption has been identified as the child’s permanent plan, the child’s identified Indian tribe has designated the caregiver as the prospective adoptive parent.;~~
  - ~~(E) — Requesting de facto parent status;~~
  - ~~(F) — Signing an adoptive placement agreement;~~
  - ~~(G) — Discussing a postadoption contact agreement with the social worker, child’s attorney, child’s CASA volunteer, adoption agency, or court;~~
  - ~~(H) — Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and~~
  - ~~(I) — Attending any of the classes required of prospective adoptive parents.~~~~

**(c) Hearing on request for prospective adoptive parent designation**

1 The court must evaluate whether the caregiver meets the criteria in (b).

2  
3 (1) The petitioner must show on the request that the caregiver meets the criteria  
4 in ~~(b)~~, 366.26(n)(1).

5  
6 (2) If the court finds that the petitioner does not show that the caregiver meets  
7 the criteria in ~~(b)~~, 366.26(n)(1), the court may deny the request without a  
8 hearing.

9  
10 (3) If the court finds that the petitioner has shown that the current caregiver  
11 meets the criteria in ~~(b)~~, 366.26(n)(1), the court must set a hearing as set forth  
12 in (4) below.

13  
14 (4) If it appears to the court that the request for designation as a prospective  
15 adoptive parent will be contested, or if the court wants to receive further  
16 evidence on the request, the court must set a hearing.

17  
18 (A) If the request for designation is made at the same time as an objection  
19 to removal, the court must set a hearing as follows:

20  
21 (i) The hearing must be set as soon as possible and not later than  
22 five court days after the objection is filed with the court.

23  
24 (ii) If the court for good cause is unable to set the matter for hearing  
25 five court days after the petition is filed, the court must set the  
26 matter for hearing as soon as possible.

27  
28 (iii) The matter may be set for hearing more than five court days after  
29 the objection is filed if this delay is necessary to allow  
30 participation by the child's identified Indian tribe or the child's  
31 Indian custodian.

32  
33 (B) If the request for designation is made before a request for removal is  
34 filed or before an emergency removal has occurred, the court must  
35 order that the hearing be set at a time within 30 calendar days after the  
36 filing of the request for designation.

37  
38 (5) If all parties stipulate to the request for designation of the caregiver as a  
39 prospective adoptive parent, the court may order the designation without a  
40 hearing.

41  
42 **(d) Notice of designation hearing**

43

1 After the court has ordered a hearing on a request for prospective-adoptive-parent  
2 designation, notice of the hearing must be as described below.

3  
4 (1) The following participants must be noticed:

5  
6 (A) The adoption agency;

7  
8 (B) The current caregiver,

9  
10 (C) The child's attorney;

11  
12 (D) The child, if the child is 10 years of age or older;

13  
14 (E) The child's identified Indian tribe if any;

15  
16 (F) The child's Indian custodian if any; and

17  
18 (G) The child's CASA program if any.

19  
20 (2) If the request for designation was made at the same time as a request for  
21 hearing on a proposed or emergency removal, notice of the designation  
22 hearing must be provided with notice of the proposed removal hearing, as  
23 stated in rule 5.727.

24  
25 (3) If the request for designation was made before a request for removal was  
26 filed or before an emergency removal occurred, notice must be as follows:

27  
28 (A) Service of the notice must be either by first-class mail sent at least 15  
29 calendar days before the hearing date to the last known address of the  
30 person to be noticed, or by personal service on the person at least 10  
31 calendar days before the hearing.

32  
33 (B) *Prospective Adoptive Parent Designation Order* (form JV-327) must be  
34 used to provide notice of a hearing on the request for prospective  
35 adoptive parent designation.

36  
37 (C) The clerk must provide notice of the hearing to the participants listed in  
38 (1) above, if the court, caregiver, or child requested the hearing.

39  
40 (D) The child's attorney must provide notice of the hearing to the  
41 participants listed in (1) above, if the child's attorney requested the  
42 hearing.

43

1 (E) *Proof of Notice* (form JV-326) must be filed with the court before the  
2 hearing on the request for prospective adoptive parent designation.  
3

4 **(e) Termination of designation**  
5

6 If the prospective adoptive parent no longer meets the criteria in ~~rule 5.726(b)~~,  
7 section 366.26(n)(1), a request to vacate the order designating the caregiver as a  
8 prospective adoptive parent may be filed under section 388 and rule 5.570.  
9

10 **(f) Confidentiality**  
11

12 If the telephone or address of the caregiver or the child is confidential, all forms  
13 must be kept in the court file under seal. Only the court, the child's attorney, the  
14 agency, and the child's CASA volunteer may have access to this information.  
15

16 **Rule 5.727. Proposed removal (§ 366.26(n))**  
17

18 **(a) Application of rule**  
19

20 This rule applies, after termination of parental rights or, in the case of tribal  
21 customary adoption, modification of parental rights, to the removal by the  
22 Department of Social Services (DSS) or a licensed adoption agency of a dependent  
23 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver  
24 who may meet the criteria for designation as a prospective adoptive parent under  
25 rule 5.726(b). This rule does not apply if the caregiver requests the child's removal.  
26

27 **(b) Participants to be served with notice**  
28

29 Before removing a child from the home of a prospective adoptive parent under rule  
30 5.726(b) or from the home of a caregiver who may meet the criteria of a  
31 prospective adoptive parent under rule 5.726(b), and as soon as possible after a  
32 decision is made to remove the child, the agency must notify the following  
33 participants of the proposed removal:  
34

- 35 (1) The court;
- 36
- 37 (2) The current caregiver, if that caregiver either is a designated prospective  
38 adoptive parent or, on the date of service of the notice, meets the criteria in  
39 ~~rule 5.726(b)~~ section 366.26(n)(1);
- 40
- 41 (3) The child's attorney;
- 42
- 43 (4) The child, if the child is 10 years of age or older;

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- (5) The child’s identified Indian tribe if any;
- (6) The child’s Indian custodian if any; and
- (7) The child’s CASA program if any.

**(c) Form of notice**

DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided.

**(d) Service of notice**

DSS or the agency must serve notice of its intent to remove a child as follows:

- (1) DSS or the agency must serve notice either by first-class mail, sent to the last known address of the person to be noticed, or by personal service.
- (2) If service is by first-class mail, service is completed and time to respond is extended by five calendar days.
- (3) Notice to the child’s identified Indian tribe and Indian custodian must be given under rule 5.481.
- (4) Proof of service of the notice on *Proof of Notice* (form JV-326) must be filed with the court.

**(e) Objection to proposed removal**

Each participant who receives notice under (b) may object to the proposed removal of the child and may request a hearing.

- (1) A request for hearing on the proposed removal must be made on *Objection to Removal* (form JV-325).
- (2) A request for hearing on the proposed removal must be made within five court or seven calendar days from date of notification, whichever is longer. If service is by mail, time to respond is extended by five calendar days.
- (3) The court must order a hearing as follows:

- 1 (A) The hearing must be set as soon as possible and not later than five court  
2 days after the objection is filed with the court.  
3  
4 (B) If the court for good cause is unable to set the matter for hearing five  
5 court days after the petition is filed, the court must set the matter for  
6 hearing as soon as possible.  
7  
8 (C) The matter may be set for hearing more than five court days after the  
9 objection is filed if this delay is necessary to allow participation by the  
10 child's identified Indian tribe or the child's Indian custodian.  
11

12 **(f) Notice of hearing on proposed removal**

13  
14 After the court has ordered a hearing on a proposed removal, notice of the hearing  
15 must be as follows:  
16

- 17 (1) The clerk must provide notice of the hearing to the agency and the  
18 participants listed in (b) above, if the court, caregiver, or child requested the  
19 hearing.  
20  
21 (2) The child's attorney must provide notice of the hearing to the agency and the  
22 participants listed in (b) above, if the child's attorney requested the hearing.  
23  
24 (3) Notice must be either by personal service or by telephone. Notice by personal  
25 service must include a copy of the forms *Notice of Intent to Remove Child*  
26 (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice  
27 must include the reasons for and against the removal, as indicated on forms  
28 JV-323 and JV-325.  
29  
30 (4) Proof of notice on *Proof of Notice* (form JV-326) must be filed with the  
31 court before the hearing on the proposed removal.  
32

33 **(g) Burden of proof**

34  
35 At a hearing on an intent to remove the child, the agency intending to remove the  
36 child must prove by a preponderance of the evidence that the proposed removal is  
37 in the best interest of the child.  
38

39 **(h) Confidentiality**

40  
41 If the telephone or address of the caregiver or the child is confidential, all forms  
42 must be kept in the court file under seal. Only the court, the child's attorney, the  
43 agency, and the child's CASA volunteer may have access to this information.

1  
2 **(i) Appeal**

3  
4 If the court order made after a hearing on an intent to remove a child is appealed,  
5 the appeal must be made under rules 8.454 and 8.456.  
6

7 **Rule 5.728. Emergency removal (§ 366.26(n))**

8  
9 **(a) Application of rule**

10  
11 This rule applies, after termination of parental rights or, in the case of tribal  
12 customary adoption, modification of parental rights, to the removal by the  
13 Department of Social Services (DSS) or a licensed adoption agency of a dependent  
14 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver  
15 who may meet the criteria for designation as a prospective adoptive parent under  
16 rule 5.726(b) when the DSS or the licensed adoption agency has determined a  
17 removal must occur immediately due to a risk of physical or emotional harm. This  
18 rule does not apply if the child's removal is carried out at the request of the  
19 caregiver.  
20

21 **(b) Participants to be noticed**

22  
23 After removing a child from the home of a prospective adoptive parent under rule  
24 5.726(b), or from the home of a caregiver who may meet the criteria of a  
25 prospective adoptive parent under rule 5.726(b), because of immediate risk of  
26 physical or emotional harm, the agency must notify the following participants of  
27 the emergency removal:  
28

- 29 (1) The court;
- 30  
31 (2) The current caregiver, if that caregiver either is a designated prospective  
32 adoptive parent or, on the date of service of the notice, meets the criteria in  
33 ~~rule 5.726(b)~~ section 366.26(n)(1);
- 34  
35 (3) The child's attorney;
- 36  
37 (4) The child if the child is 10 years of age or older;
- 38  
39 (5) The child's identified Indian tribe if any;
- 40  
41 (6) The child's Indian custodian if any; and
- 42  
43 (7) The child's CASA program if any.

1  
2 **(c) Form of notice**

3  
4 *Notice of Emergency Removal* (form JV-324) must be used to provide notice of an  
5 emergency removal, as described below.

- 6  
7 (1) The agency must provide notice of the emergency removal as soon as  
8 possible but no later than two court days after the removal.  
9  
10 (2) Notice must be either by telephone or by personal service of the form.  
11  
12 (3) Telephone notice must include the reasons for removal as indicated on the  
13 form, and notice of the right to object to the removal.  
14  
15 (4) Whenever possible, the agency, at the time of the removal, must give a blank  
16 copy of the form to the caregiver and, if the child is 10 years of age or older,  
17 the child.  
18  
19 (5) Notice to the court must be by filing of the form with the court. The proof of  
20 notice included on the form must be completed when the form is filed with  
21 the court.  
22

23 **(d) Objection to emergency removal**

24  
25 Each participant who receives notice under (b) may object to the removal of the  
26 child and may request a hearing.

- 27  
28 (1) A request for hearing on the emergency removal must be made on *Objection*  
29 *to Removal* (form JV-325).  
30  
31 (2) The court must order a hearing as follows:  
32  
33 (A) The hearing must be set as soon as possible and not later than five court  
34 days after the objection is filed with the court.  
35  
36 (B) If the court for good cause is unable to set the matter for hearing within  
37 five court days after the petition is filed, the court must set the matter  
38 for hearing as soon as possible.  
39  
40 (C) The matter may be set for hearing more than five court days after the  
41 objection is filed if this delay is necessary to allow participation by the  
42 child's identified Indian tribe or the child's Indian custodian.  
43

1 **(e) Notice of emergency removal hearing**

2  
3 After the court has ordered a hearing on an emergency removal, notice of the  
4 hearing must be as follows:

- 5  
6 (1) Notice must be either by personal service or by telephone. Notice by personal  
7 service must include a copy of *Notice of Emergency Removal* (form JV-324).  
8 Telephone notice must include the reasons for and against the removal, as  
9 indicated on forms JV-324 and JV-325.  
10  
11 (2) The clerk must provide notice of the hearing to the agency and the  
12 participants listed in (b) above, if the court, the caregiver, or the child  
13 requested the hearing.  
14  
15 (3) The child’s attorney must provide notice of the hearing to the agency and the  
16 participants listed in (b) above, if the child’s attorney requested the hearing.  
17  
18 (4) Proof of notice on *Proof of Notice* (form JV-326) must be filed with the court  
19 before the hearing on the emergency removal.  
20

21 **(f) Burden of proof**

22  
23 At a hearing on an emergency removal, the agency that removed the child must  
24 prove by a preponderance of the evidence that the removal is in the best interest of  
25 the child.  
26

27 **(g) Confidentiality**

28  
29 If the telephone or address of the caregiver or the child is confidential, all forms  
30 must be kept in the court file under seal. Only the court, the child’s attorney, the  
31 agency, and the child’s CASA volunteer and program may have access to this  
32 information.  
33

34 **Rule 5.730. Adoption**

35  
36 **(a) Procedures—adoption**

- 37  
38 (1) The petition for the adoption of a dependent child who has been freed for  
39 adoption may be filed in the juvenile court with jurisdiction over the  
40 dependency.  
41  
42 (2) All adoption petitions must be completed on *Adoption Request* (form  
43 ADOPT-200) and must be verified. In addition, the petitioner must complete

1                    *Adoption Agreement* (form ADOPT-210) and *Adoption Order* (form  
2                    ADOPT-215).

3  
4                    (3) A petitioner seeking to adopt an Indian child must also complete *Adoption of*  
5                    *Indian Child* (form ADOPT-220). If applicable, *Parent of Indian Child*  
6                    *Agrees to End Parental Rights* (form ADOPT-225) may be filed.

7  
8                    (4) The clerk must open a confidential adoption file for each child and this file  
9                    must be separate and apart from the dependency file, with an adoption case  
10                    number different from the dependency case number.

11  
12                    **(b) Notice**

13  
14                    The clerk of the court must give notice of the adoption hearing to:

15  
16                    (1) Any attorney of record for the child;

17  
18                    (2) Any CASA volunteer;

19  
20                    (3) The child welfare agency;

21  
22                    (4) The tribe of an Indian child; and

23  
24                    (5) The California Department of Social Services. The notice to the California  
25                    Department of Social Services must include a copy of the completed  
26                    *Adoption Request* (form ADOPT-200) and a copy of any adoptive placement  
27                    agreement or agency joinder filed in the case.

28  
29                    **(c) Hearing**

30  
31                    If the petition for adoption is filed in the juvenile court, the proceeding for adoption  
32                    must be heard in juvenile court once appellate rights have been exhausted. Each  
33                    petitioner and the child must be present at the hearing. The hearing may be heard  
34                    by a referee if the referee is acting as a temporary judge.

35  
36                    **(d) Record**

37  
38                    The record must reflect that the court has read and considered the assessment  
39                    prepared for the hearing held under section 366.26 and as required by section  
40                    366.22(b), the report of any CASA volunteer, and any other reports or documents  
41                    admitted into evidence.

1 (e) **Assessment**

2  
3 The preparer of the assessment may be called and examined by any party to the  
4 adoption proceeding.  
5

6 (f) **Consent**

7  
8 (1) At the hearing, each adoptive parent must execute *Adoption Agreement* (form  
9 ADOPT-210) in the presence of and with the acknowledgment of the court.  
10

11 (2) If the child to be adopted is 12 years of age or older, he or she must also  
12 execute *Adoption Agreement* (form ADOPT-210), except in the case of a  
13 tribal customary adoption.  
14

15 (g) **Dismissal of jurisdiction**

16  
17 If the petition for adoption is granted, the juvenile court must dismiss the  
18 dependency, terminate jurisdiction over the child, and vacate any previously set  
19 review hearing dates. A completed *Termination of Dependency (Juvenile)* (form  
20 JV-364) must be filed in the child’s juvenile dependency file.  
21  
22

23 **Advisory Committee Comment**

24  
25 Family Code section 8600.5 exempts tribal customary adoption from various provisions of the  
26 Family Code applicable to adoptions generally, including section 8602, which requires the  
27 consent of a child over the age of 12 to an adoption. However, under Welfare and Institutions  
28 Code section 366.24(c)(7), “[t]he child, birth parents, or Indian custodian and the tribal customary  
29 adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the  
30 tribal customary adoption and the child’s best interest.” Under Welfare and Institutions Code  
31 section 317(e), for all children over 4 years of age, the attorney for the child must determine the  
32 child’s wishes and advise the court of the child’s wishes. Welfare and Institutions Code section  
33 361.31(e) provides that “[w]here appropriate, the placement preference of the Indian child, when  
34 of sufficient age, . . . shall be considered.” This is consistent with Guideline F-3 of the *Guidelines*  
35 *for State Courts; Indian Child Custody Proceedings* issued by the Bureau of Indian Affairs on  
36 November 26, 1979, which recognizes that the request and wishes of a child of sufficient age are  
37 important in making an effective placement. The committee concludes, therefore, that while the  
38 consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of  
39 a child are still an important and appropriate factor for the court to consider and for children’s  
40 counsel to ascertain and present to the court when determining whether tribal customary adoption  
41 is the appropriate permanent plan for an Indian child.  
42

1 **Rule 5.735. Legal guardianship**

2  
3 **(a) Proceedings in juvenile court (§ 366.26(d))**

4  
5 The proceedings for the appointment of a legal guardian for a dependent child must  
6 be in the juvenile court. The request for appointment of a guardian must be  
7 included in the social study report prepared by the county welfare department or in  
8 the assessment prepared for the hearing under section 366.26. Neither a separate  
9 petition nor a separate hearing is required.

10  
11 **(b) Notice; hearing**

12  
13 Notice for the guardianship hearing must be given under section 294, and the  
14 hearing must proceed under section 366.26.

15  
16 **(c) Conduct of hearing**

- 17  
18 (1) Before appointing a guardian, the court must read and consider the social  
19 study report specified in section 366.26 and note its consideration in the  
20 minutes of the court.  
21  
22 (2) The preparer of the social study report may be called in and examined by any  
23 party to the proceedings.  
24

25 **(d) Findings and orders**

- 26  
27 (1) If the court finds that legal guardianship is the appropriate permanent plan,  
28 the court must appoint the guardian and order the clerk to issue letters of  
29 guardianship, which will not be subject to the confidentiality protections of  
30 juvenile court documents as described in section 827.  
31  
32 (2) The court ~~may~~ must issue orders regarding visitation of the child by a parent  
33 or ~~other relative~~ guardian, unless the court finds that visitation would be  
34 detrimental to the physical or emotional well-being of the child.  
35  
36 (3) The court may issue orders regarding visitation of the child by a relative.  
37  
38 ~~(3)~~ (4) On appointment of a guardian under section 366.26, the court may terminate  
39 dependency.  
40

41 **(e) Notification of appeal rights**

42  
43 The court must advise all parties of their appeal rights as provided in rule 5.585.

1 **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)**

2  
3 **(a) Review hearings—adoption and guardianship**

4  
5 Following an order for termination of parental rights or, in the case of tribal  
6 customary adoption, modification of parental rights, or a plan for the establishment  
7 of a guardianship under section 366.26, the court must retain jurisdiction and  
8 conduct review hearings at least every 6 months to ensure the expeditious  
9 completion of the adoption or guardianship.

10  
11 (1) At the review hearing, the court must consider the report of the petitioner  
12 required by section 366.3(g), the report of any CASA volunteer, the case plan  
13 submitted for this hearing, and any report submitted by the child’s caregiver  
14 under section 366.21(d); inquire about the progress being made to provide a  
15 permanent home for the child; consider the safety of the child; and enter  
16 findings as required by section 366.3(e).

17  
18 (2) When adoption is granted, the court must terminate its jurisdiction.

19  
20 (3) When legal guardianship is granted, the court may continue dependency  
21 jurisdiction if it is in the best interest of the child, or the court may terminate  
22 dependency jurisdiction and retain jurisdiction over the child as a ward of the  
23 guardianship.

24  
25 (4) Notice of the hearing must be given as provided in section 295.

26  
27 **(b) Review hearings—foster care**

28  
29 Following the establishment of a plan other than those provided for in (a), review  
30 hearings must be conducted at least every 6 months by the court or by a local  
31 administrative review panel.

32  
33 (1) At the review hearing, the court or administrative review panel must consider  
34 the report of the petitioner, the report of any CASA volunteer, the case plan  
35 submitted for this hearing, and any report submitted by the child’s caregiver  
36 under section 366.21(d); inquire about the progress being made to provide a  
37 permanent home for the child; consider the safety of the child; and enter  
38 findings regarding each item listed in section 366.3(e).

39  
40 (2) The court or administrative review panel must consider the case plan  
41 submitted for this hearing and must find as follows:  
42

- 1 (A) The child was actively involved in the development of his or her own  
2 case plan and plan for permanent placement as age and  
3 developmentally appropriate; or  
4
- 5 (B) The child was not actively involved in the development of his or her  
6 own case plan and plan for permanent placement as age and  
7 developmentally appropriate. If the court or administrative review  
8 panel makes such a finding, the court must order the agency to actively  
9 involve the child in the development of his or her own case plan and  
10 plan for permanent placement, unless the court finds that the child is  
11 unable, unavailable, or unwilling to participate.  
12
- 13 (3) For a child 12 years of age or older and in a permanent placement, the court  
14 must consider the case plan and must find as follows:  
15
- 16 (A) The child was given the opportunity to review the case plan, sign it, and  
17 receive a copy; or  
18
- 19 (B) The child was not given the opportunity to review the case plan, sign it,  
20 and receive a copy. If the court makes such a finding, the court must  
21 order the agency to give the child the opportunity to review the case  
22 plan, sign it, and receive a copy.  
23
- 24 (4) If the child is not placed for adoption, the court or administrative review  
25 panel must find as follows:  
26
- 27 (A) The agency has made diligent efforts to locate an appropriate relative;  
28 or  
29
- 30 (B) The agency has not made diligent efforts to locate an appropriate  
31 relative. If the court or administrative review panel makes such a  
32 finding, the court or administrative review panel must order the agency  
33 to make diligent efforts to locate an appropriate relative; and  
34
- 35 (C) Each relative whose name has been submitted to the agency as a  
36 possible caregiver has been evaluated as an appropriate placement  
37 resource; or  
38
- 39 (D) Each relative whose name has been submitted to the agency as a  
40 possible caregiver has not been evaluated as an appropriate placement  
41 resource. If the court or administrative review panel makes such a  
42 finding, the court or administrative review panel must order the agency

1                                    to evaluate as an appropriate placement resource, each relative whose  
2                                    name has been submitted to the agency as a possible caregiver.  
3

4        (4) ~~(5)~~ No less frequently than once every 12 months, the court must conduct a  
5                                    review of the previously ordered permanent plan to consider whether the plan  
6                                    continues to be appropriate for the child. The review of the permanent plan  
7                                    may be combined with the 6-month review.  
8

9        ~~(5)~~ (6) If circumstances have changed since the permanent plan was ordered, the  
10                                    court may order a new permanent plan under section 366.26 at any  
11                                    subsequent hearing, or any party may seek a new permanent plan by a motion  
12                                    filed under section 388 and rule 5.570.  
13

14        ~~(6)~~ (7) Notice of the hearing must be given as provided in section 295.  
15

16        ~~(7)~~ (8) The court must continue the child in foster care unless the parents prove, by  
17                                    a preponderance of the evidence, that further efforts at reunification are the  
18                                    best alternative for the child. In those cases, the court may order reunification  
19                                    services for a period not to exceed 6 months.  
20

21        ~~(8)~~ ~~At a review held 12 months after an original or subsequent order for the child~~  
22                                    ~~to remain in foster care, the court must consider all permanency planning~~  
23                                    ~~options, including whether the child should be returned to a parent or~~  
24                                    ~~guardian, placed for adoption, or appointed a legal guardian. If the court~~  
25                                    ~~orders that the child remain in foster care, it must identify the foster care~~  
26                                    ~~setting by name and identify a specific permanency goal for the child. The~~  
27                                    ~~court may order that the name and address of the foster home remain~~  
28                                    ~~confidential.~~  
29

30        ~~(9)~~ ~~At a review held 12 months after an original or subsequent order for the child~~  
31                                    ~~to remain in foster care, the court must order a hearing under section 366.26~~  
32                                    ~~unless the court finds by clear and convincing evidence that there is a~~  
33                                    ~~compelling reason for determining that a section 366.26 hearing is not in the~~  
34                                    ~~child's best interest because the child is being returned to the home of the~~  
35                                    ~~parent, the child is not a proper subject for adoption, or there is no one~~  
36                                    ~~available to assume guardianship.~~  
37

38        ~~(10)~~ ~~If the court makes the findings in (9), the court may order that the child~~  
39                                    ~~remain in foster care.~~  
40

41        (c) **Hearing on petition to terminate guardianship or modify guardianship orders**  
42

1 A petition to terminate a guardianship established by the juvenile court, to appoint  
2 a successor guardian, or to modify or supplement orders concerning the  
3 guardianship must be filed in juvenile court. The procedures described in rule 5.570  
4 must be followed, and *Request to Change Court Order* (form JV-180) must be  
5 used.

- 6
- 7 (1) Proceedings on a petition to terminate a guardianship established under  
8 section 366.26 must be heard in the juvenile court. If dependency was  
9 terminated at the time of or subsequent to the appointment of the guardian,  
10 and dependency is later declared in another county, proceedings to terminate  
11 the guardianship may be held in the juvenile court with current dependency  
12 jurisdiction.
- 13
- 14 (2) Not less than 15 court days before the hearing date, the petitioner must serve  
15 notice of the hearing on the department of social services; the guardian; the  
16 child, if 10 years or older; parents whose parental rights have not been  
17 terminated; the court that established the guardianship, if in another county;  
18 and counsel of record for those entitled to notice.
- 19
- 20 (3) At the hearing on the petition to terminate the guardianship, the court may do  
21 one of the following:
- 22
- 23 (A) Deny the petition to terminate guardianship;
- 24
- 25 (B) Deny the petition and request the county welfare department to provide  
26 services to the guardian and the ward for the purpose of maintaining the  
27 guardianship, consistent with section 301; or
- 28
- 29 (C) Grant the petition to terminate the guardianship.
- 30
- 31 (4) If the petition is granted and the court continues or resumes dependency, the  
32 court must order that a new plan be developed to provide stability and  
33 permanency to the child. Unless the court has already scheduled a hearing to  
34 review the child's status, the court must conduct a hearing within 60 days.  
35 Parents whose parental rights have not been terminated must be notified of  
36 the hearing on the new plan. The court may consider further efforts at  
37 reunification only if the parent proves, by a preponderance of the evidence,  
38 that the efforts would be the best alternative for the child.
- 39
- 40 (5) If the court terminates a guardianship established in another county, the clerk  
41 of the county of current dependency jurisdiction must transmit a certified  
42 copy of the order terminating guardianship within 15 days to the court that  
43 established the original guardianship.

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**DISPOSITIONAL ATTACHMENT:  
REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT  
(Welf. & Inst. Code, §§ 361, 361.2)**

1.  The child is a person described by Welf. & Inst. Code, § 300 (check all that apply):
- |                                 |                                 |                                 |                                 |                                 |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 300(a) | <input type="checkbox"/> 300(c) | <input type="checkbox"/> 300(e) | <input type="checkbox"/> 300(g) | <input type="checkbox"/> 300(i) |
| <input type="checkbox"/> 300(b) | <input type="checkbox"/> 300(d) | <input type="checkbox"/> 300(f) | <input type="checkbox"/> 300(h) | <input type="checkbox"/> 300(j) |
- and is adjudged a dependent of the court.**

**Circumstances justifying removal from custodial parent**

2.  There is clear and convincing evidence of the circumstances stated in Welf. and Inst. Code, § 361 regarding the persons specified below (check all that apply):
- |   | 361(c)(1)                | 361(c)(2)                | 361(c)(3)                | 361(c)(4)                | 361(c)(5)                |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. <input type="checkbox"/> Mother            | <input type="checkbox"/> |
| b. <input type="checkbox"/> Presumed father   | <input type="checkbox"/> |
| c. <input type="checkbox"/> Biological father | <input type="checkbox"/> |
| d. <input type="checkbox"/> Legal guardian    | <input type="checkbox"/> |
| e. <input type="checkbox"/> Indian custodian  | <input type="checkbox"/> |
| f. <input type="checkbox"/> Other (specify):  | <input type="checkbox"/> |

3.  The child  is  may be an Indian child, and, by clear and convincing evidence, including testimony of a qualified expert witness, continued physical custody by the following person is likely to cause that child serious emotional or physical damage.
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> mother           | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian |
| <input type="checkbox"/> presumed father  | <input type="checkbox"/> Indian custodian  |   |
| <input type="checkbox"/> other (specify): |  |   |

4. Reasonable efforts  were  were not made to prevent or eliminate the need for removal from the home.

5.  The child  is  may be an Indian child, and,
- by clear and convincing evidence, active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
  - active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
  - there has been consultation with the child's identified Indian tribe regarding whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** (check all that apply):
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Mother           | <input type="checkbox"/> Biological father | <input type="checkbox"/> Legal guardian |
| <input type="checkbox"/> Presumed father  | <input type="checkbox"/> Indian custodian  |   |
| <input type="checkbox"/> Other (specify): |  |   |

**Family finding and engagement**

- The county agency has made diligent efforts to identify, locate, and contact the child's relatives.
- The county agency has not made diligent efforts to identify, locate, and contact the child's family members.
  - The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with family or domestic violence.
  - The county agency must submit a report to the court on or before (date):  
detailing the diligent efforts made and the results of such efforts.

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**Case plan development**

8. a.  The county agency solicited and integrated into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*):
- b.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*):  
and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
- c.  The county agency did not solicit and integrate into the case plan the input of the  child  mother  father  representative of child's identified Indian tribe  other (*specify*):  
and the agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

**Custody and Placement**

9.  The  mother  presumed father  biological father did not reside with the child at the time the petition was filed and  does  does not desire custody of the child.
- a.  By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:  
 Mother  Presumed father  Biological father
- b. The factual basis for the findings in this item is stated on the record.
10.  **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
- a.  in the approved home of a relative.
- b.  in the approved home of a nonrelative extended family member.
- c.  in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
- d.  with a foster family agency for placement in a foster family home.
- e.  in a suitable licensed community care facility.
- f.  in a home or facility in accordance with the federal Indian Child Welfare Act.
11.  **Placement with the child's relative, (name):**  
has been independently considered by the court and is denied for the reasons stated on the record.
12.  **The statutory preference order for placement in a suitable Indian home is modified for good cause as**
- a.  stated on the record.
- b.  described in the social worker's report.
- c.  Other (*specify*):
13.  **The child's out-of-home placement is necessary.**
14.  **The child's current placement is appropriate.**
15.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-415, item 17 for a  written  oral report by the county agency on the progress made in locating an appropriate place.
- b.  Other (*specify*):

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16.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  is not the most appropriate placement for the child and is not in the best interest of the child.  
 The matter is continued to the date and time indicated in form JV-415, item 17 for a  written  oral report by the county agency on the progress made toward.
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  other (*specify*):

**Reunification services**

17.  **Provision of reunification services to the biological father**  will  will not benefit the child.
18.  **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.
- a.  Participation in the program  is  is not in the child's best interest.
  - b.  The program  is  is not suitable to meet the needs of the mother and child.

19.  **The following person is incarcerated:**
- mother                       legal guardian                       other (*specify*):
- presumed father                       Indian custodian
- and reasonable reunification services are
- a.  granted.
  - b.  denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.

20.  **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**
- a. The  mother                       legal guardian                       other (*specify*):  
 presumed father                       Indian custodian  
 is a person described in Welf. & Inst. Code, § (*specify*):  
 361.5(b)(3)     361.5(b)(7)     361.5(b)(9)     361.5(b)(11)     361.5(b)(13)  
 361.5(b)(4)     361.5(b)(8)     361.5(b)(10)     361.5(b)(12)     361.5(b)(15)  
 and reunification services are
    - (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.
    - (2)  denied.
  - b. The  mother                       legal guardian                       other (*specify*):  
 presumed father                       Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.
  - c. The  mother                       legal guardian                       other (*specify*):  
 presumed father                       Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(2), and and reunification services are
    - (1)  granted.
    - (2)  denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.

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20. d. The  mother  legal guardian  other (specify):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are  
 (1)  granted, because  
     (a)  reunification services are likely to prevent reabuse or neglect.  
     (b)  the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.  
 (2)  denied.

e. The  mother  legal guardian  
 presumed father  Indian custodian  
 other person who is a legal parent of the child (name):  
 is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are  
 (1)  granted, because, by clear and convincing evidence, reunification is in the best interest of the child.  
 (2)  denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.  
 (3)  The factual basis for the findings in this item is stated on the record.

f. The  mother  legal guardian  other (specify):  
 presumed father  Indian custodian  
 is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to serves. Reunification services are denied.

21. a.  **The county agency must provide reunification services**, and the following must participate in the reunification services stated in the case plan:

- mother  biological father  legal guardian  other (specify):  
 presumed father  Indian custodian

b.  **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan achieved is (specify):

**Efforts**

**22. The county agency**

- a.  has  
 b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

**23. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>				
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>				
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>				
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>				
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>				
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>				

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**Siblings**

24.  **The child does not have siblings under the court's jurisdiction.**
25.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Health and education**

26.  The  mother  biological father  Indian custodian  
 presumed father  Legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code. § 369 and vested with the county agency.
27. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)-(f) of the California Rules of Court. A copy of the rule 5.650(e)-(f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)-(f) of the California Rules of Court. A copy of rule 5.650(e)-(f) may be obtained from the court clerk.
28. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
29.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
30.  The following persons are ordered to make the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 29:  
 a.  social worker.  
 b.  parent (*name*):  
 c.  surrogate parent (*name*):  
 d.  educational representative (*name*):  
 e.  other (*name*):
31.  The child's education placement has changed since the date the child was physically removed from the home.  
 a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.  
 b.  The child is enrolled in school.  
 c.  The child is attending school.

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32.  **Child 14 years of age or older:**

- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services.
- (1)  stated on the record
- (2)  as follows:

**Advisements**

33.  **Child under the age of three years or member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)91)(C)**  
The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group:
- a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date of the dispositional hearing, but no later than twelve months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier.
- Six-month hearing date:**
- b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:
- Whether the sibling group was removed from parental care as a group;
  - The closeness and strength of the sibling bond;
  - The ages of the siblings;
  - The appropriateness of maintaining the sibling group;
  - The detriment to the child if sibling ties are not maintained;
  - The likelihood of finding a permanent home for the sibling group;
  - Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
  - The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
  - The best interest of each child in the sibling group.
- c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

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34.  **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5 (a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, §366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

<b>Twelve-month permanency hearing date:</b>
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35.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).
- c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(5) of the California Rules of Court to any party not present.
- e.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- f. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or in an identified placement with a specific goal is (*specify date*):

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family and Juvenile Law: Inter-county Transfers

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Nicole Giacinti, (415)865-7598, [nicole.giacinti@jud.ca.gov](mailto:nicole.giacinti@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO:

Project description from annual agenda: Develop rules and forms to implement the transfer provisions for nonminor dependents and to provide further guidance to youth seeking to reenter juvenile court jurisdiction as nonminor dependents consistent with the provisions of earlier legislation regarding the extension of juvenile court jurisdiction and foster care services to dependents and wards up to 21 years of age. Circulated for comment in Winter 2014 and deferred at the request of courts in Southern California. The committee further recommends revising the current intercounty transfer rules and form JV-550 to include provisions that have streamlined the transfer process for counties involved in the SacJoaquin and Southern California transfer protocols. Specifically, the committee recommends adopting the modified version of form JV-550 created by the Southern California courts and approving the Motion for Transfer used by those same courts, as a mandatory form. These forms provide a synopsis of pertinent procedural and factual information of the case being transferred. Lastly, the committee recommends revising rules 5.610 and 5.612 to require mandatory use of the Motion for Transfer and revised form JV-550.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Juvenile Law: Intercounty Transfers	Thursday, April 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-448 and JV-552; revise form JV-550	January 1, 2017
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti, 415-865-7598
Hon. Jerilyn L. Borack, Cochair	<a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends adopting one new rule and one new mandatory Judicial Council form to implement the transfer provisions for nonminor dependents in Assembly Bill 1712. The committee further recommends amending the current intercounty transfer rules and revising a mandatory form to include provisions that have streamlined the transfer process for counties involved in the SacJoaquin and Southern California transfer protocols. Specifically, the committee recommends incorporating the modifications Southern California courts made to a mandatory form and approving the motion for transfer used by those same courts as a mandatory form. These forms provide a synopsis of pertinent procedural and factual information of the case being transferred. Lastly, the committee recommends amending two rules of the California Rules of Court to require mandatory use of the forms.<sup>1</sup>

### Background

The original proposal to create rules and forms for the intercounty transfer of nonminor dependent cases circulated during the winter 2014 comment cycle. The proposal was

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<sup>1</sup> All further rule references are to the California Rules of Court unless otherwise indicated.

*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.*

necessitated by the implementation of legislation creating extended foster care.<sup>2</sup> Although most of the changes needed to implement these various bills have been made by the Judicial Council, no action has been taken to clarify the procedure to transfer the case of a nonminor dependent from one county to another.

When the original proposal circulated for comment, several Southern California courts were in the process of piloting the use of a modified form JV-550. In addition to the modified form, the Southern California courts were following a specific protocol that included use of a mandatory transfer-out motion. Three of the Southern California courts involved in the pilot project (The Superior Courts of Los Angeles, Riverside, and San Diego Counties) and the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees requested, and the Family and Juvenile Law Committee agreed, to defer the proposal pending the conclusion of the Southern California pilot project. The Southern California pilot project has concluded, and on December 11, 2015, the Judicial Council approved use of the modified JV-550 by the courts involved in the Southern California protocol.

The nonminor dependent transfer rule and form are based on the juvenile transfer rules and form. In light of the success of the Southern California and SacJoaquin protocols, the committee reviewed the elements of those two protocols to determine whether to include certain provisions in the nonminor dependent rule and form. Review of the two protocols confirmed that including elements of these protocols would enhance the efficacy of the nonminor dependent transfer rule, as well as the juvenile transfer rule. Consequently, the committee decided to propose statewide changes to the juvenile transfer rules and form, in addition to proposing the new rule and form for transfer of nonminor dependent cases.

### **Prior Circulation**

The proposal to create rules and forms for the intercounty transfer of nonminor dependent cases previously circulated during the winter 2014 comment cycle. Based on the comments received, that proposal was deferred pending the conclusion of the Southern California intercounty transfer pilot project.

### **The Proposal**

Currently the California Rules of Court and the Judicial Council forms do not establish a process for the intercounty transfer of nonminor dependent cases. The adoption of rule 5.613 and form JV-552 will ensure conformance with the legislation implementing extended foster care, which necessitate that a process for the intercounty transfer of nonminor cases be established.

Amending rules 5.610 and 5.612, revising form JV-550, and adopting the *Motion for Transfer Out* (form JV-448) as a mandatory form will enhance efficiency for courts and parties in the intercounty transfer of juvenile and nonminor cases.

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<sup>2</sup> Assembly Bill 12 (Beall; Stats 2010, ch. 559), Assembly Bill 212 (Beall; Stats 2012, ch. 459), Assembly Bill 1712 (Beall; Stats 2012, ch. 846), and Assembly Bill 787 (Stone; Stats 2014, ch. 487).

### **Intercounty transfer of nonminor cases**

The Family and Juvenile Law Advisory Committee proposes adopting rule 5.613 and form JV-552. Rule 5.613 mandates transfer-out and transfer-in procedures for the transfer of nonminor dependent cases, in conformance with the mandate stated in AB 1712, which revised Welfare and Institutions Code sections 17.1 and 375 to provide that a nonminor dependent who has been placed in a planned permanent living arrangement and has continuously resided as a nonminor dependent in a county other than the county of jurisdiction for at least 12 months with the intent to continue to reside in that county may have his or her case transferred to that county of residence.

The procedures to transfer the cases of minor wards and dependents are currently governed by rule 5.610, which states the requirements for a hearing to transfer a case out, and rule 5.612, which governs transfer-in proceedings. Rule 5.613 largely tracks the procedural requirements for transfer of minor cases as they apply to minors who are not detained; it, however, includes transfer-out and transfer-in requirements in one rule rather than two.

Furthermore, one additional requirement not present for the transfer of a minor ward or dependent but proposed for a nonminor dependent is that the nonminor support the transfer. Comments questioning the inclusion of this requirement were received during the winter 2014 cycle comment period, but the committee recommends maintaining the requirement. Because extended foster care is a voluntary status intended to assist the nonminor in achieving independence, the committee believes that to allow a court to transfer the jurisdiction of a nonminor over his or her objection would be inconsistent with the intent of the California Fostering Connections to Success Act.

The version of rule 5.613 currently being circulated contains language requiring use of the proposed mandatory *Motion for Transfer Out* (form JV-448). Recognizing that not all courts may have the resources to complete every section of form JV-448, rule 5.613(b)(5) makes items 4 and 5 on form JV-448 optional.

Another difference between the version of rule 5.613 circulated during the winter 2014 cycle and the current version appears in paragraph (8) of subdivision (b). Paragraph (8) concerns transmittal of documents and provides that in nonminor cases, the entire underlying juvenile case file need not be transmitted. Rather, only those documents associated with the final hearing held before the nonminor reaches the age of majority need be transmitted. Transmitting the entire juvenile file is not prohibited, but neither is it mandated.

The proposed new mandatory form JV-552 relates to the transfer of nonminor cases from one county to another. Form JV-552 will alert the new court to the existence of the transfer and allow the sending court to set a transfer-in hearing within 10 days of the transfer-out hearing. Although largely based on the form proposed during the winter 2014 cycle, various sections of the version of form JV-552 have been rearranged and a new section that allows the transfer-out court to schedule the transfer-in hearing has been added.

### **Revisions to rules and forms governing intercounty transfer of minor cases**

The Family and Juvenile Law Advisory Committee recommends revising form JV-550, adopting form JV-448, *Motion for Transfer Out*, and amending rules 5.610 and 5.612.

The proposed amendments to form JV-550 would incorporate the modifications tested during Southern California's intercounty transfer pilot project. Specifically, the committee proposes adding a section that states whether the transfer request was granted or denied, as well as a section that documents the delinquency disposition imposed. It is further recommended that form JV-550 include additional details about the case, such as ICWA information, special education issues, educational rights holder details, visitation, parentage, and 241.1 status. Including these details in form JV-550 will provide the transfer-in court with a snapshot of all the important case details, insuring that the transfer-in court has all the information it needs to conduct the transfer-in hearing and set appropriate future hearings.

Lastly, form JV-550 would include a section that allows the transfer-out court to schedule, and notice the parties for, the transfer-in hearing. Currently, the transfer-in hearing is scheduled by the transfer-in court after that court receives notice of the transfer. The parties receive notice of the transfer-in hearing by mail. This method of scheduling the transfer-in hearing can lead to delays. The courts involved in both the SacJoaquin and the Southern California protocols have successfully implemented this method of scheduling transfer-in hearings and have noted a decrease in delays typically associated with transfer-in cases.

In addition to revising form JV-550, the committee recommends adopting for mandatory use *Motion for Transfer Out* (form JV-448). Form JV-448 includes the case type, documentation of verification of residence, education information, and other important case details. Form JV-448, like form JV-550, provides a synopsis of the pertinent facts and procedural history of the case. This level of detail ensures that the transfer-out court has the information necessary to rule on the requested transfer. The additional details provided in the transfer-out motion benefit the transfer-in court as well, highlighting procedural steps that still need to be taken and enabling the court to easily identify the procedural posture of the case.

The committee also recommends revising rules 5.610 and 5.612 to require the transfer-out court to set the transfer-in hearing and mandate use of *Motion for Transfer Out*, form JV-448. Form JV-550 is a mandatory form and has been since its inception. Courts have expressed their appreciation for the consistency created by using this mandatory form to unify transfer, which is a statewide process.

The revisions to rule 5.610 also make some of the items in the *Motion for Transfer Out* (form JV-448) and *Juvenile Court Transfer-Out Orders* (form JV-550) optional. The committee recognizes that some courts may not have the resources to provide all the information requested in forms JV-448 and JV-550; thus, rule 5.610 specifies that some of the sections requiring detailed case information may be left blank. Structuring the rule this way ensures that courts with

limited resources will not be overburdened, while still encouraging all courts to provide the requested information.

### **Alternatives Considered**

The committee considered proposing only the rule and form related to the transfer of nonminor dependent cases; however, based on the proven gains in efficiency achieved by the SacJoaquin and Southern California protocols, the committee decided to propose revisions to the process for intercounty transfer of minor cases.

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

This proposal may result in minimal additional record keeping related to filing proposed new forms JV-448 and JV-552. The proposal will also result in additional data entry for the transfer-out social worker or probation officer, who will now be tasked with completing form JV-448 and providing the additional information required on form JV-550. This additional work during the transfer-out process will result in much less work for the transfer-in court, which should result in a net savings across the state. It also means that the outlay of time for the sending county will be recouped when it receives a transfer case as the receiving county.

## 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?
- Rather than allowing courts to leave certain sections of forms JV-448 and JV-550 blank, should all the information included on these forms be mandatory?
- Proposed rule 5.613 contemplates that courts will send only those documents related to the last court hearing held before the minor reached the age of majority. Should rule 5.613 instead require that the entire underlying juvenile file be sent to the court receiving the nonminor dependent case?
- Proposed rule 5.613 and amended rules 5.610 and 5.612 include shortened timelines for scheduling the transfer-in hearing, transmission of documents, and transportation of youth in custody. These shortened timelines have proven effective in courts that participate in electronic transfer of case files between counties. Will the shortened time frames work in counties that do not use electronic file transfer to transmit case files?

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. Proposed Cal. Rules of Court, rules 5.610, 5.612, and 5.613, at pages 7–12
2. Proposed forms JV-448, JV-550, and JV-552, at pages 13–22

Rule 5.613 of the California Rules of Court would be adopted, and rules 5.610 and 5.612 would be amended, effective January 1, 2017, to read:

1 **Rule 5.610. Transfer-out hearing**

2  
3 (a) \* \* \*

4  
5 (b) **Verification of residence**

6  
7 The residence of the person entitled to physical custody may be verified ~~by that~~  
8 ~~person in court~~ or by declaration of a social worker or probation officer in the  
9 transferring or receiving county.

10  
11 (c)-(d) \* \* \*

12  
13 (e) **Conduct of hearing**

14  
15 The request for transfer must be made on *Motion for Transfer Out* (form JV-448).  
16 Counties that are unable to provide the information in items 4 and 5 of the form  
17 may leave those items blank. The information requested in all other items must be  
18 included.

19  
20 After the court determines the identity and residence of the child's custodian, the  
21 court must consider whether transfer of the case would be in the child's best  
22 interest. The court may not transfer the case unless it determines that the transfer  
23 will protect or further the child's best interest.

24  
25 (f) **Date of transfer-in hearing**

26  
27 If the transfer-out motion is granted, the sending court must set a date certain for the  
28 transfer-in hearing in the receiving court: within 5 court days of the transfer-out  
29 order if the child is in custody and within 10 court days of the transfer-out order if  
30 the child is out of custody. The sending court must state on the record the date,  
31 time, and location of the hearing in the receiving court.

32  
33 ~~(g)~~ (g) **Order of transfer (§§ 377, 752)**

34  
35 The order of transfer must be entered on *Juvenile Court Transfer-Out Orders* (form  
36 JV-550), which must include all required information and findings. Counties that  
37 are unable to provide the information in items 6(e) and (m) of the form may leave  
38 those items blank. The remainder of the required information and findings must be  
39 completed.

40  
41 ~~(g)~~ (h) \* \* \*

42  
43 ~~(h)~~ (i) **Transport of child and transmittal of documents (§§ 377, 752)**

44  
45 (1) If the child is ordered transported in custody to the receiving county, the child  
46 must be delivered to the receiving county ~~within 7 court days~~ at least two

1 business days before the transfer-in hearing, and the clerk of the court of the  
2 transferring county must prepare a certified copy of the complete case file so  
3 that it may be transported with the child to the court of the receiving county.  
4

5 (2) If the child is not ordered transported in custody, the clerk of the transferring  
6 court must transmit to the clerk of the court of the receiving county within ~~10~~  
7 five court days a certified copy of the complete case file.  
8

9 (3) A certified copy of the complete case file is deemed an original.  
10

11 ~~(i)~~ (j) \* \* \*

12  
13 **Rule 5.612. Transfer-in hearing**

14  
15 **(a) Procedure on transfer (§§ 378, 753)**

16 On receipt and filing of a certified copy of a transfer order, the receiving  
17 court must accept jurisdiction of the case. The receiving court may not reject  
18 the case. The clerk of the receiving court must ~~immediately place the~~  
19 ~~transferred case on the court calendar for a transfer in hearing~~ confirm the  
20 transfer-in hearing date scheduled by the sending court and ensure that date is  
21 on the receiving court's calendar. The receiving court must notify the  
22 transferring court on receipt and filing of the certified copies of the transfer  
23 order and complete case file.

24 ~~(A) Within two court days after the transfer out order and documents are~~  
25 ~~received if the child has been transported in custody and remains~~  
26 ~~detained; or~~

27 ~~(B) Within 10 court days after the transfer out order and documents are~~  
28 ~~received if the child is not detained in custody.~~

29 ~~(2) No requests for additional time for the transfer in hearing may be approved.~~  
30 ~~The clerk must immediately cause notice to be given to the child and the~~  
31 ~~parent or guardian, orally or in writing, of the time and place of the transfer~~  
32 ~~in hearing. The receiving court must notify the transferring court on receipt~~  
33 ~~and filing of the certified copies of the transfer order and complete case file.~~

34 ~~(b)-(f)~~ \* \* \*

35  
36 **Rule 5.613. Transfer of nonminor dependents**

37  
38 **(a) Purpose**

39  
40 This rule applies to requests to transfer the county of jurisdiction of a nonminor  
41 dependent as allowed by Welfare and Institutions Code section 375. This rule sets  
42 forth the procedures that a court is to follow when it seeks to order a transfer of a

1 nonminor dependent and those to be followed by the court receiving the transfer.  
2 All other intercounty transfers of juveniles are subject to rules 5.610 and 5.612.

3  
4 **(b) Transfer-out hearing**

5  
6 (1) Determination of residence—special rule on intercounty transfers (§ 375)

7  
8 (A) For purposes of this rule, the residence of a nonminor dependent who is  
9 placed in a planned permanent living arrangement may be either the  
10 county in which the court that has jurisdiction over the nonminor is  
11 located or the county in which the nonminor has resided continuously  
12 for at least one year as a nonminor dependent and the nonminor  
13 dependent has expressed his or her intent to remain.

14  
15 (B) If a nonminor dependent’s dependency jurisdiction has been resumed, or  
16 if transition jurisdiction has been assumed or resumed by the juvenile  
17 court that retained general jurisdiction over the nonminor under section  
18 303, the county that the nonminor dependent is residing in may be  
19 deemed the county of residence of the nonminor dependent. The court  
20 may make this determination if the nonminor has established a  
21 continuous physical presence in the county for one year as a nonminor  
22 and has expressed his or her intent to remain in that county after the  
23 court grants the petition to resume jurisdiction. The period of continuous  
24 physical presence includes any period of continuous residence  
25 immediately before filing the petition.

26  
27 (2) Verification of residence

28  
29 The residence of a nonminor may be verified by declaration of a social worker  
30 or probation officer in the transferring or receiving county.

31  
32 (3) Transfer to county of nonminor’s residence (§ 375)

33  
34 If the court is resuming dependency jurisdiction or assuming or resuming  
35 transition jurisdiction of a nonminor for whom the court has retained general  
36 jurisdiction under section 303(b) as a result of a petition filed under section  
37 388(e), after granting the petition, the court may order the transfer of the case  
38 to the juvenile court of the county in which the nonminor is living if the  
39 nonminor establishes residency in that county as provided in (b)(1) and the  
40 court finds that the transfer is in the minor’s best interest.

41  
42 (4) Transfer on change in nonminor’s residence (§ 375)

1 If a nonminor dependent under the dependency or transition jurisdiction of the  
2 court is placed in a planned permanent living arrangement in a county other  
3 than the county with jurisdiction over the nonminor, the court may, on an  
4 application for modification under rule 5.570, transfer the case to the juvenile  
5 court of the county in which the nonminor is living if the nonminor establishes  
6 residency in that county as provided in (b)(1).

7  
8 (5) Conduct of hearing

9  
10 The request for transfer must be made on *Motion for Transfer Out* (form JV-  
11 448). Counties that are unable to provide the information in items 4 and 5 of  
12 the form may leave those items blank. The information requested in all other  
13 items must be included.

14  
15 After the court determines whether a nonminor has established residency in  
16 another county as required in (b)(1), the court must consider whether transfer  
17 of the case would be in the nonminor's best interest. The court may not  
18 transfer the case unless it determines that the nonminor supports the transfer  
19 and that the transfer will protect or further the nonminor's best interest.

20  
21 If the transfer-out motion is granted, the sending court must set a date certain  
22 for the transfer-in hearing in the receiving court, which must be within 10  
23 court days of the transfer-out order. The sending court must state on the record  
24 the date, time, and location of the hearing in the receiving court.

25  
26 (6) Order of transfer (§ 377)

27  
28 The order of transfer must be entered on *Nonminor Dependent Transfer*  
29 *Orders* (form JV-552), which must include all required information and  
30 findings.

31  
32 (7) Modification of form JV-552

33  
34 *Nonminor Dependent Transfer Orders* (form JV-552) may be modified as  
35 follows:

36  
37 (A) Notwithstanding the mandatory use of form JV-552, the form may be  
38 modified for use by a formalized regional collaboration of courts to  
39 facilitate the efficient processing of transfer cases among those courts if  
40 the modification has been approved by the Judicial Council.  
41

1           (B) The mandatory form must be used by a regional collaboration when  
2           transferring a case to a court outside the collaboration or when accepting  
3           a transfer from a court outside the collaboration.

4  
5           (8) Transmittal of documents (§ 377)

6  
7           The clerk of the transferring court must transmit to the clerk of the court of the  
8           receiving county no later than five court days from date of the transfer-out  
9           order a certified copy of, at a minimum, all documents associated with the last  
10           hearing held before the nonminor reached majority, including the court report  
11           and all findings and orders. The file may be transferred electronically, if  
12           possible. A certified copy of the complete case file is deemed an original.

13  
14           (9) Appeal of transfer order (§ 379)

15  
16           The order of transfer may be appealed by the transferring or receiving county,  
17           and notice of appeal must be filed in the transferring county, under rule 8.400.  
18           Notwithstanding the filing of a notice of appeal, the receiving county must  
19           assume jurisdiction of the case on receipt and filing of the order of transfer.

20  
21           (c) **Transfer-in hearing**

22  
23           (1) Procedure on transfer (§ 378)

24  
25           (A) On receipt and filing of a certified copy of a transfer order, the receiving  
26           court must accept jurisdiction of the case. The receiving court may not  
27           reject the case. The receiving court must notify the transferring court on  
28           receipt and filing of the certified copies of the transfer order and  
29           complete case file. The clerk of the receiving court must confirm the  
30           transfer-in hearing date scheduled by the sending court and ensure that  
31           date is on the receiving court's calendar.

32  
33           (B) No requests for additional time for the transfer-in hearing may be  
34           approved. The clerk must immediately cause notice to be given to the  
35           nonminor, orally or in writing, of the time and place of the transfer-in  
36           hearing. The receiving court must notify the transferring court on receipt  
37           and filing of the certified copies of the transfer order and complete case  
38           file.

39  
40           (2) Conduct of hearing

41  
42           At the transfer-in hearing, the court must:  
43

1           (A) Advise the nonminor of the purpose and scope of the hearing; and

2  
3           (B) Provide for the appointment of counsel, if appropriate.

4  
5       (3) Subsequent proceedings

6  
7           The proceedings in the receiving court must commence at the same phase as  
8           when the case was transferred. The court may continue the hearing for an  
9           investigation and a report to a date not to exceed 15 court days.

10  
11       (4) Setting six-month review (§ 366.31)

12  
13           When an order of transfer is received and filed relating to a nonminor  
14           dependent, the court must set a date for a six-month review within six months  
15           of the most recent review hearing or, if the sending court transferred the case  
16           immediately after assuming or resuming jurisdiction, within six months of the  
17           date a voluntary reentry agreement was signed.

18  
19       (5) Change of circumstances or additional facts (§§ 388, 778)

20  
21           If the receiving court believes that a change of circumstances or additional  
22           facts indicate that the nonminor does not reside in the receiving county, a  
23           transfer-out hearing must be held under this rule and rule 5.570. The court  
24           may direct the department of social services or the probation department to  
25           seek a modification of orders under section 388 or section 778 and under rule  
26           5.570.



CHILD'S NAME:	CASE NUMBER:
---------------	--------------

3. b. The  probation officer  social worker in the  receiving county  sending county has conducted an address check and verified the address.
- c. Verification completed by: \_\_\_\_\_ Date verified: \_\_\_\_\_
- d. Documentation establishing residency in the proposed receiving county is attached to this motion. The following documentation is attached:

#### 4. Education Information

- a. Name of last school attended:
- b. Name of school district:
- c.  Name of current Educational Rights Holder or Surrogate Parent:
- d.  Name of proposed Educational Rights Holder or Surrogate Parent:
- e.  There is an Individual Education Plan (IEP) for the minor.

#### 5. Services

- a. The level of services required by the minor  can  cannot be met in the proposed receiving county.
- b. The level of services required by  parent or legal guardian  can  cannot be met in the proposed receiving county.
- c. Describe the type and level of service or supervision required by the minor and/or parent or legal guardian (e.g., *drug treatment, residential, outpatient, NA only, etc.*):
- d.  A copy of the most recent case plan is attached.  
 Probation has not previously supervised the minor.

#### 6. Other

- a.  The current status of the Indian Child Welfare Act (ICWA) is (*specify*):
- b.  Parentage has been determined as indicated in minute order dated:
- c.  A WIC §241.1 determination has been made as indicated in the minute order dated:
- d.  Restitution has been determined in the amount of \$:  
See minute order dated:
- e.  The minor has exceptional medical needs (*specify*):
- f.  The minor qualifies for regional center services.
- g.  There are pending Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) issues in this case.
- h.  A Special Juvenile Immigrant Status (SJIS) application is pending.
- i.  A Social Security Income (SSI) application is pending.
- j.  There are active orders regarding psychotropic medications. The last order is dated:

CHILD'S NAME:	CASE NUMBER:
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k.  If applicable, in the below box, please list all dependency and delinquency cases for the minor.

Case Number	County	Case Type

l.  Other:

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

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF  PROBATION OFFICER  SOCIAL WORKER)

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF  PARTY  ATTORNEY FOR PARTY)

\_\_\_\_\_  
 SIGNATURE

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

**PROOF OF SERVICE**

I served a copy of the Motion for Transfer on the following persons or entities by personally delivering a copy to the person served, OR by emailing the document to an agreed upon email address of the person served, OR by faxing the document to the fax number provided by the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the U.S. mail with postage prepaid or at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practices with which I am readily familiar:

- |  |   |   |
|--|---|---|
| 1. <input type="checkbox"/> Social worker<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service:  | <input type="checkbox"/> Probation officer<br><br><br><br><input type="checkbox"/> Legal Guardian<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service: | <input type="checkbox"/> Attorney<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service: |
| 2. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal Guardian<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service: | <input type="checkbox"/> Attorney<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service:   |   |
| 3. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal Guardian<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service: | <input type="checkbox"/> Attorney<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service:   |   |
| 4. <input type="checkbox"/> Child (if 10 years of age or older)<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service:  | <input type="checkbox"/> Attorney<br>a. Name and address:<br><br>b. Date of service:<br>c. Method of service:   |   |

Additional parties served. Additional Proof of Service form attached.

5. At the time of service, I was at least 18 years of age and not a party to this cause. I am a resident of, or employed in, the county where the mailing occurred. My residence or business address is specify):

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		_____ JUDICIAL OFFICER OF THE JUVENILE COURT
-----------------------------	--	---

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 - Not approved by Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	
<b>JUVENILE COURT TRANSFER-OUT ORDERS</b> <input type="checkbox"/> § 300 <input type="checkbox"/> § 601 <input type="checkbox"/> § 602 <input type="checkbox"/> For Disposition	CASE NUMBER: _____

1. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_
2. a. Date of hearing: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- b. Judicial officer (name): \_\_\_\_\_
- c. Persons present:
- |  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> Child             | <input type="checkbox"/> Child's attorney  | <input type="checkbox"/> Mother         | <input type="checkbox"/> Mother's attorney |
| <input type="checkbox"/> Father            | <input type="checkbox"/> Father's attorney | <input type="checkbox"/> Legal Guardian | <input type="checkbox"/> Social Worker     |
| <input type="checkbox"/> Probation officer | <input type="checkbox"/> District Attorney | <input type="checkbox"/> County Counsel | <input type="checkbox"/> CASA Advocate     |
| <input type="checkbox"/> Other:            |  |   |  |
3. The court has read and considered the motion for transfer and
- |   |
|---|
| <input type="checkbox"/> the report of the social worker.     |
| <input type="checkbox"/> the report of the probation officer. |
| <input type="checkbox"/> other relevant evidence.             |

**4. The court orders the transfer:**

a.  GRANTED

b.  DENIED

The minor's address has not been verified, and accompanying documentation is not attached.

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 5. The court finds and orders under Welfare and Institutions Code Section**  375  750 and  Cal. Rules of Court, rule 5.610
- a. The legal residence of the child is with the following person who resides in the county specified in item 5e and has the legal right to physical custody of the child (indicate name and relationship):
- Name: \_\_\_\_\_  Mother  Father
- Address: \_\_\_\_\_  Legal Guardian
- \_\_\_\_\_  Other with whom the child resides with approval of the court
- City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
- Confidential Address
- b. **Transfer of the child's case is in the child's best interests.**

CHILD'S NAME:	CASE NUMBER:
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- c. The child currently resides with:  Parents  Mother  Father  
 Guardian  Relative (*relationship*):

Name(s) (if different from 5a above):

- Foster home (*name*):  
 Group home (*name*):  
 Residential facility (*name*):  
 Other (*name*):

The address of the child's parent(s) (other than listed in 5a or 5c above):

Name: _____	Name: _____
Address: _____	Address: _____
State: _____ Zip: _____	State: _____ Zip: _____

- d. The child is  detained  placed  out-of-custody.
- e. The child's case is ordered transferred to the county of (*specify*): \_\_\_\_\_ Zip: \_\_\_\_\_
- f. (1)  The child shall remain at the present address.  
(2)  The child must be transported in custody to the receiving county at least two business days before the transfer-in hearing date.  
(3)  Under prior orders of this court  
(i) the child was detained on (*date*): \_\_\_\_\_  
(ii)  the child was found to be described by section 300, subdivision:  
 (a)  (b)(1)  (b)(2)  (c)  (d)  (e)  (f)  (g)  
 (h)  (i)  (j) on (*date*): \_\_\_\_\_  
(iii)  dependency was declared on (*date*): \_\_\_\_\_  
(iv)  the child was found to be described by section  601  602 on (*date*): \_\_\_\_\_  
(v)  Delinquency Disposition  
 Wardship was declared on (*date*): \_\_\_\_\_  
 Section 725 was imposed on (*date*): \_\_\_\_\_  
 Section 790 deferred entry of judgment was deferred on (*date*): \_\_\_\_\_  
 Out-of-home placement order was made on (*date*): \_\_\_\_\_  
(vi) The last hearing was on (*date*): \_\_\_\_\_  
(iv) On (*date*): \_\_\_\_\_ the court ordered the  mother  father  
 child to appear at the transfer-in hearing.

g. A transfer-in hearing has been set

in receiving court for (*date*): \_\_\_\_\_

at (*time*): \_\_\_\_\_ in dept.: \_\_\_\_\_

at the following address: \_\_\_\_\_

h. The following hearings have been scheduled or need to be scheduled:

- Disposition hearing  
 has been scheduled for (*date*): \_\_\_\_\_  
 needs to be scheduled.  
 other (*identify*): \_\_\_\_\_
- Review hearing (*type*): \_\_\_\_\_  
 has been scheduled for (*date*): \_\_\_\_\_  
 needs to be scheduled.

CHILD'S NAME:	CASE NUMBER:
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6. The court further finds

a. Regarding the Indian Child Welfare Act (ICWA)

- ICWA does apply; see minute order dated: \_\_\_\_\_
- ICWA does not apply; see minute order dated: \_\_\_\_\_
- The court has not yet determined whether ICWA is applicable. \_\_\_\_\_

b. Jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act

- has been established.  is not applicable. \_\_\_\_\_
- has not been established. \_\_\_\_\_

c.  An application for special immigrant juvenile status is pending.

d.  An application for SSI is pending. \_\_\_\_\_

e. (1)  This child has special education needs. An Individual Education Plan has been created by (school district): \_\_\_\_\_

- The child does not have special education needs. \_\_\_\_\_
- The child has other education issues (specify): \_\_\_\_\_

(2)  The court has limited the rights of the parent or guardian to make educational or developmental-services decisions for the child.

- The court has appointed an educational rights holder under JV-535 (dated): \_\_\_\_\_
- The local educational agency has appointed a surrogate parent under JV-536 (dated): \_\_\_\_\_

Name of the educational rights holder or surrogate parent: \_\_\_\_\_

(3)  Name of minor/child's last school and/or school district attended: \_\_\_\_\_

f.  Visitation has been determined as indicated on minute order dated: \_\_\_\_\_

g.  Reunification services were ordered for the parent(s)/legal guardian(s) on minute order dated: \_\_\_\_\_

h.  Parentage has been determined as indicated on minute order dated: \_\_\_\_\_

i.  A WIC § 241.1 determination that (check one, or both if a dual-status county)

- dependency \_\_\_\_\_
- delinquency serves the best interest of the child and protection of the public is indicated in the minute order dated: \_\_\_\_\_
- If a dual status county, the lead court/agency \_\_\_\_\_  
 was identified as: \_\_\_\_\_ or  was deferred. \_\_\_\_\_

j.  The child has the following extraordinary medical needs: \_\_\_\_\_

k.  Orders regarding psychotropic medication were made on: \_\_\_\_\_

l.  Confinement time/custody credit (Delinquency Cases Only)

- i. As of \_\_\_\_\_ the overall term of confinement time in the sending county was: \_\_\_\_\_
- ii. Overall custody credits: \_\_\_\_\_

m.  The minor has the following juvenile cases:

Case Number	County	Case Type

n.  Other: \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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7. The court further orders that:

a. The court clerk has permission to open and access the documents placed under seal in this case for the purpose of transferring the matter to the new county. Once the receiving court has taken delivery of the sealed documents, the receiving county shall re-seal the documents.

b. Other:

Date:

\_\_\_\_\_  
JUDICIAL OFFICER OF THE JUVENILE COURT

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 - Not approved by Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR NAME:	
<b>JUVENILE COURT TRAFNER-OUT ORDERS—NONMINOR DEPENDENT</b>	NMD CASE NUMBER:

Language:	UNDERLYING JUVENILE CASE NUMBER:
-----------	----------------------------------

1. Nonminor's name:

2. a. Date of hearing:

Dept.:

Room:

b. Judicial officer (name):

c. Persons present

- Nonminor dependent
- Social Worker
- Other:
- Other:

- Nonminor Attorney (name):
- Probation Officer
- CASA

3. The court has read and considered the motion for transfer and

- the report of the social worker.
- the report of the probation officer.
- other relevant evidence.

**4. Case History**

- a.  Findings and orders for nonminor dependent were made on (date):
- b.  The court resumed jurisdiction over the individual as a nonminor dependent on (date):
- c. The last hearing was on (date):
- d. On (date): , the nonminor was personally ordered to appear at the transfer-in hearing.
- e. **A transfer-in hearing has been set**

**in the receiving court for (date):**  
**at (time):** in dept.:

**at the following address:**

f. The following hearings have been scheduled or need to be scheduled:

- A Nonminor Dependent Status Review Hearing
  - has been scheduled for (date): \_\_\_\_\_
  - needs to be scheduled.
- Other:
  - has been scheduled for (date): \_\_\_\_\_
  - needs to be scheduled.

NONMINOR'S NAME:	CASE NUMBER:
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5. The court finds and orders under Welfare and Institutions Code Section 375 the following:

a. The nonminor dependent has been placed in a planned permanent living arrangement and has maintained a continuous residence in the county listed in 5.d for at least one year as a nonminor dependent and has expressed his or her intent to remain in that county.

b. Transfer of the case is in the nonminor dependent's best interests.

c. The nonminor dependent currently resides at:

Address:

City:

State:

Zip:

d. The nonminor dependent's case is ordered transferred to the county of *(specify)*:

Zip Code:

e.  Other orders:

Date:

\_\_\_\_\_

JUDICIAL OFFICER OF THE JUVENILE COURT

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Protective Orders: Requests for the Possession and Protection of Animals

Revise forms CH-100, CH-110, CH-120, CH-130, EA-100, EA-120, EA-110, EA-130, JV-245, JV 250, and JV-255

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):*

*For Civil and Small Claims, Bruce Greenlee, 415 865-7698, bruce.greenlee@jud.ca.gov*

*For Family and Juvenile Law, Frances Ho, 415-865-7662, frances.ho@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Family and Juvenile Law Advisory Committee- This project falls under Item 1 of the approved agenda.

Civil and Small Claims Advisory Committee: This project is Item 12 of the annual agenda.

Project description from annual agenda: Family and Juvenile Law Advisory Committee- Review AB 494 and propose rules and forms as may be appropriate for the council's consideration

Civil and Small Claims Advisory Committee; Possession and control of pets.

Assembly Bill 494 amends the current civil harassment and elder abuse prevention statutes to permit the court to issue orders regarding pets. Various CH and EA forms will need to be revised to reflect those new provisions.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR16-**

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Title	Action Requested
Protective Orders: Requests for the Possession and Protection of Animals	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CH-100, CH-110, CH-120, CH-130, EA-100, EA-120, EA-110, EA-130, JV-245, JV 250, and JV-255	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee	For Civil and Small Claims:
Hon. Raymond M. Cadei, Chair	Bruce Greenlee, 415-865-7698 <a href="mailto:bruce.greenlee@jud.ca.gov">bruce.greenlee@jud.ca.gov</a>
Family and Juvenile Law Advisory Committee	Anne Ronan, 415-865-8933 <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	For Family and Juvenile Law:
Hon. Mark A. Juhas, Cochair	Frances Ho, 415- 865-7662 <a href="mailto:frances.ho@jud.ca.gov">frances.ho@jud.ca.gov</a>

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### **Executive Summary and Origin**

To implement the recent statutory changes the Civil and Small Claims Advisory Committee recommends revisions to Judicial Council forms for civil harassment and elder abuse and dependent adult protective orders to include orders regarding the possession and protection of animals and the Family and Juvenile Law Advisory Committee recommends revisions to Judicial Council forms to include such orders in juvenile cases.

### **Background**

In 2008, orders regarding the possession and protection of animals became available in Domestic Violence Protection Act (DVPA) cases by Senate Bill 353 (Stats. 2007, ch. 205). This specific remedy has not been available in other types of restraining orders until now. Effective January 1, 2016, Assembly Bill 494 amended Code of Civil Procedure 527.6 (civil harassment), Welfare and Institutions Code sections 213.5 (juvenile), and 15657.03 (elder and dependent adult abuse) to permit a court to order, on a showing of good cause, in connection with an animal owned,

*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.*

possessed, leased, kept, or held by the petitioner or other protected person<sup>1</sup>, or residing in the residence or household of the petitioner or other protected person, either or both of the following:<sup>2</sup>

- Grant the person protected by the order exclusive care, possession, or control of the animal, referred to as “order for possession”
- Order the restrained person to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal, referred to as “order for protection.”

### **The Proposal**

This proposal will benefit the judicial branch, attorneys, self-represented litigants, by providing a simple way for a party to request, and for the court to grant, an animal possession and protection order. The following forms are proposed to be revised to add a new item to provide for orders for possession and protection of animals:

1. CH-100, *Request for Civil Harassment Restraining Orders* (Item 15);
2. CH-110, *Temporary Restraining Order* (civil harassment) (Item 8);
3. CH-120, *Response to Request for Civil Harassment Restraining Orders* (Item 7);
4. CH-130, *Order After Hearing* (civil harassment) (Item 10);
5. EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders* (Item 19);
6. EA-110, *Temporary Restraining Order* (elder and dependent adult abuse) (Item 10);
7. EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (Item 8);
8. EA-130, *Order After Hearing* (elder and dependent adult abuse) (Item 11);
9. JV-245, *Request for Restraining Order—Juvenile*; (Item 8h);
10. JV-250, *Notice of Hearing and Temporary Restraining Order—Juvenile*; (Item 10); and
11. JV-255, *Restraining Order—Juvenile* (Item 9).

In addition, due to differences in form structure and the law, the Family and Juvenile Law Advisory Committee proposes revisions to the juvenile forms that differ from the civil harassment and elder abuse protective order forms.

- Order forms, JV-250 and JV-255, would require the court to indicate the name of the protected person who is granted an order for possession. This is needed because the remedy may be granted to the applicant of the protective order but the order forms

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<sup>1</sup> Under Welf. and Inst. Code section 213.5, the order can apply to any animal owned, possessed, leased, kept, or held by a person protected or by a person residing in the residence or household of a protected person.

<sup>2</sup> Code Civ. Proc., § 527.6(b)(1)(A); Welf. & Inst. Code, §§ 213.5(a), 15657.03(b)(3)(A).

include all protected people in a single item so it is not clear who has been granted an order of possession without filling in the name as proposed or reorganizing the form.

- The order forms, JV-250 and JV-255, would include language that the order for possession could be made for an animal that is in the residence or household of a person protected by the order.
- Request form, JV-245, would include a place for the applicant to indicate the reason he or she is requesting possession of the animal. This information would be useful to the court, especially when the applicant is seeking control over an animal that may not belong to him or her.

### **Alternatives Considered**

The committees considered not revising the forms to include a specific item to provide for orders for possession and protection of animals. All eleven forms currently contain an item for “Other Orders.” Orders for possession and protection of animals could be entered currently as an “other order.” However, a separate item better informs litigants and the court as to what orders may be granted and the predicate conditions. The committees find this a preferable long-term approach to these orders.

As noted above, this remedy has been available in DVPA matters since 2008. The DVPA request form (DV-100) and order forms (DV-110 and DV-130) assume that the applicant is requesting both possession and protection of the animal(s). The Family and Juvenile Law Advisory Committee recommended combining these orders because it would result in a clearer order for law enforcement. Even in cases where the petitioner does not think that ownership is disputed the other party might disagree. The committee believed that in most cases, having both orders would be beneficial and in rare instances where both orders would not be appropriate, the court could strike part of the order.

The Protective Order Working Group (POWG), a subcommittee whose function is to ensure consistency across protective order forms when practical, considered revising the forms contained in this proposal in the same manner as the DVPA forms but because of differences in the statute between DVPA and the laws applicable to this proposal, the POWG recommended that the orders for possession and protection should be separated to allow the applicant to request one or both. The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committees approved POWG’s recommendation.

Under Welf. and Inst. Code sections 213.5(a)(1) and 213.5(b)(1), the beneficiary of an order for possession of animal(s) is the applicant of the protective order. Currently, forms JV-250 and JV-255 do not reference the applicant. If the applicant is a protected person, he or she is listed with other protected persons under one item. Only the request form, JV-245, references the applicant at item 3, which asks who the petitioner is. The Family and Juvenile Law Advisory Committee considered restructuring forms JV-250 and JV-255 to include a reference to the applicant or petitioner but decided against restructuring the order forms and instead recommends providing a

place for the court to list the name of the person who is granted an order for possession of the animal(s).

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

The committees anticipate that these proposals will result in some small costs incurred by the courts to replace existing forms, and train court staff about the changes to the forms included in this proposal. However, the committees expect that the changes will save court resources by clarifying and simplifying standards and procedures.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

### **Attachments and Links**

1. Judicial Council forms CH-100, CH-110, CH-120, CH-130,EA-100, EA-110, EA-120, EA-130, JV-245, JV-250 and JV-255.

2. Assembly Bill 494

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB494](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB494)

Clerk stamps date here when form is filed.

**DRAFT**  
**NOT APPROVED BY THE JUDICIAL COUNCIL**

Read *Can a Civil Harassment Restraining Order Help Me?* (Form CH-100-INFO) before completing this form. Also fill out *Confidential CLETS Information* (Form CLETS-001) with as much information as you know.

**1 Person Seeking Protection**

a. Your Full Name: \_\_\_\_\_ Age: \_\_\_\_\_

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 want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

**2 Person From Whom Protection Is Sought**

Full Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address (if known): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3 Additional Protected Persons**

a. Are you asking for protection for any other family or household members?  Yes  No *If yes, list them:*

Full Name	Sex	Age	Lives with you?	How are they related to you?
_____	_____	_____	<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. Attach a sheet of paper and write "Attachment 3a—Additional Protected Persons" for a title. You may use Form MC-025, Attachment.

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 3b—Why Others Need Protection" for a title.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This is not a Court Order.**



**4 Relationship of Parties**

How do you 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 4—Relationship of Parties" for a title.

**5 Venue**

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

- a.  The person in (2) lives in this county.
- b.  I was harassed by the person in (2) in this county.
- c.  Other (specify): \_\_\_\_\_

**6 Other Court Cases**

a. Have you or any of the persons named in (3) been involved in another court case with the person in (2)?

Yes  No *If yes, check each kind of case and indicate where and when each was filed:*

	<u>Kind of Case</u>	<u>Filed in (County/State)</u>	<u>Year Filed</u>	<u>Case Number (if known)</u>
(1)	<input type="checkbox"/> Civil Harassment	_____	_____	_____
(2)	<input type="checkbox"/> Domestic Violence	_____	_____	_____
(3)	<input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(4)	<input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(5)	<input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(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 you or any of the persons in (3) and the person in (2)?  No  Yes *If yes, attach a copy if you have one.*

**7 Description of Harassment**

Harassment means violence or threats of violence against you, or a course of conduct that seriously alarmed, annoyed, or harassed you and caused you substantial emotional distress. A course of conduct is more than one act.

a. Tell the court about the last time the person in (2) harassed you.

- (1) When did it happen? (provide date or estimated date): \_\_\_\_\_
- (2) Who else was there? \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**This is not a Court Order.**

(3) How did the person in ② harass you? (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 7a(3)—Describe Harassment" for a title.

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(4) 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 7a(4)—Use of Weapons" for a title.

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(5) Were you harmed or injured because of the harassment?

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 7a(5)—Harm or Injury" for a title.

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(6) Did the police come?  Yes  No

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

If yes, the order protects (check all that apply):

a.  Me b.  The person in ② c.  The persons in ③

Attach a copy of the order if you have one.

b. Has the person in ② harassed you at other times?

Yes  No (If yes, describe prior incidents and provide dates of harassment 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 7b—Previous Harassment" for a title.

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**This is not a Court Order.**

**Check the orders you want.**

**8  Personal Conduct Orders**

I ask the court to order the person in **(2)** **not** to do any of the following things to me or to any person to be protected listed in **(3)**:

- a.  Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy 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 8c—Other Personal Conduct Orders," for a title.*

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*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.*

**9  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) <input type="checkbox"/> Me                                     | (8) <input type="checkbox"/> My vehicle               |
| (2) <input type="checkbox"/> The other persons listed in <b>(3)</b> | (9) <input type="checkbox"/> Other <i>(specify)</i> : |
| (3) <input type="checkbox"/> My home                                | _____   |
| (4) <input type="checkbox"/> My job or workplace                    | _____   |
| (5) <input type="checkbox"/> My school                              | _____   |
| (6) <input type="checkbox"/> My children's school                   | _____   |
| (7) <input type="checkbox"/> My children's place of child care      | _____   |

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 9b—Stay-Away Orders," for a title.*

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**10  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

*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 or store with a licensed gun dealer, any guns or firearms within his or her immediate possession or control.*

**This is not a Court Order.**



**11 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 11—Immediate Orders" for a title.

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**12  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 CH-200-INFO explains What Is "Proof of Personal Service"? Form CH-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 12—Request to Give Less Than Five-Days Notice" for a title.

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**13  No Fee for Filing or Service**

- a.  There should be no filing fee because the person in ② has used or threatened to use violence against me, has stalked me, or has acted or spoken in some other way that makes me reasonably fear violence.
- b.  The sheriff or marshal should serve (notify) the person in ② about the orders for free because my request for orders is based on unlawful violence, a credible threat of violence, or stalking.
- c.  There should be no filing fee and the sheriff or marshal should serve the person in ② for free because I am entitled to a fee waiver. (You must complete and file Form FW-001, Application for Waiver of Court Fees and Costs.)

**14  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 14—Lawyer's Fees and Costs" for a title.

**This is not a Court Order.**



**15**  **Possession and Protection of Animals**

I ask the court to order the following:

- a.  That I be given the sole possession, care, and control of the animals listed below, which I own, possess, lease, keep, or hold, or which reside in my household.

*(Identify animals by, e.g., type, breed, name.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b.  That the person in **2** must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**16**  **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 15—Additional Orders Requested," for a title.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17** 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: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Sign your name*

**This is not a Court Order.**

Clerk stamps date here when form is filed.

Person in ① must complete items ①, ②, and ③ only.

**DRAFT**  
**NOT APPROVED BY THE**  
**JUDICIAL COUNCIL**

**① Protected Person**

a. Your Full Name: \_\_\_\_\_

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 want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

**② Restrained Person**

Full Name: \_\_\_\_\_

Description:

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Race: \_\_\_\_\_

Home Address (if known): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Relationship to Protected Person: \_\_\_\_\_

**③  Additional Protected Persons**

In addition to the person named in ①, the following family or household members of that person are protected by the temporary orders indicated below:

<u>Full Name</u>	<u>Sex</u>	<u>Age</u>	<u>Household Member?</u>	<u>Relation to Protected Person</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	_____

Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

The court will complete the rest of this form.

**④ Expiration Date**

This Order expires at the end of the hearing scheduled for the date and time below:

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.

**This is a Court Order.**



**To the Person in ② :**

The court has granted the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

**⑤ Personal Conduct Orders**

Not Requested     Denied Until the Hearing     Granted as Follows:

- a. You must **not** do the following things to the person named in ①
  - and to the other protected persons listed in ③ :
  - (1)  Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.
  - (2)  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.
  - (3)  Take any action to obtain the person’s address or location. If this item (3) is not checked, the court has found good cause not to make this order.
  - (4)  Other (*specify*):
    - Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

- b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in ①.

**⑥ Stay-Away Order**

Not Requested     Denied Until the Hearing     Granted as Follows:

- a. You must stay at least \_\_\_\_\_ yards away from (*check all that apply*):
  - (1)  The person in ①
  - (2)  Each person in ③
  - (3)  The home of the person in ①
  - (4)  The job or workplace of the person in ①
  - (5)  The school of the person in ①
  - (6)  The school of the children of the person in ①
  - (7)  The place of child care of the children of the person in ①
  - (8)  The vehicle of the person in ①
  - (9)  Other (*specify*):

- b. This stay-away order does not prevent you from going to or from your home or place of employment.

**⑦ No Guns or Other Firearms and Ammunition**

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
  - (1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

**This is a Court Order.**



(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. (You may use Form CH-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.)

c.  The court has received information that you own or possess a firearm.

**8 Possession and Protection of Animals**

Not Requested     Denied Until the Hearing     Granted as Follows (specify):

a.  The person in ① is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. (Identify animals by, e.g., type, breed, name.)

\_\_\_\_\_

b.  The person in ② must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**9 Other Orders**

Not Requested     Denied Until the Hearing     Granted as Follows (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional orders are attached at the end of this Order on Attachment 9.

**To the Person in ① :**

**10 Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). (Check one):

- a.  The clerk will enter this Order and its proof-of-service form into CARPOS.
- b.  The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.
- c.  By the close of business on the date that this Order is made, the person in ① or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address (City, State, Zip)
_____	_____
_____	_____

Additional law enforcement agencies are listed at the end of this Order on Attachment 10.

**This is a Court Order.**



**11 No Fee to Serve (Notify) Restrained Person**       **Ordered**       **Not Ordered**

The sheriff or marshal will serve this Order without charge because:

- a.  The Order is based on unlawful violence, a credible threat of violence, or stalking.
- b.  The person in ① is entitled to a fee waiver.

**12** Number of pages attached to this Order, if any: \_\_\_\_\_

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

\_\_\_\_\_  
*Judicial Officer***Warnings and Notices to the Restrained Person in ②****You Cannot Have Guns or Firearms**

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item ⑦ above. The court will require you to prove that you did so.

**Notice Regarding Nonappearance at Hearing and Service of Order**

If you have been personally served with this Temporary Restraining Order and Form CH-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item ②.

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

**After You Have Been Served With a Restraining Order**

- Obey all the orders.
- Read Form CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out Form CH-120, *Response to Request for Civil Harassment Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response if the Request claims that you inflicted or threatened violence against or stalked the person in ①.
- You must have Form CH-120 served by mail on the person in ① or that person's attorney. You cannot do this yourself. The person who does the mailing should complete and sign Form CH-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). If you do not know how to prepare a declaration, you should see a lawyer.

**This is a Court Order.**

- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

## Instructions for Law Enforcement

### Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

### Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 3. The order *ends* on the expiration date in item ④ on page 1.

### Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

### Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

### If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

**This is a Court Order.**



**Conflicting Orders—Priorities for Enforcement**

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities** (see Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO*: If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

Clerk's Certificate  
[seal]

**—Clerk's Certificate—**

I certify that this *Temporary 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.**

Clerk stamps date here when form is filed.

**DRAFT**  
**NOT APPROVED BY THE JUDICIAL COUNCIL**

Person in ① must complete items ①, ②, and ③ only.

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

**① Protected Person**

a. Your Full Name: \_\_\_\_\_  
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 want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**② Restrained Person**

Full Name: \_\_\_\_\_  
Description:

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Race: \_\_\_\_\_  
Home Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Relationship to Protected Person: \_\_\_\_\_

**③ Additional Protected Persons**

In addition to the person named in ①, the following family or household members of that person are protected by the orders indicated below:

<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	_____

Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

**④ Expiration Date**

This Order, except for any award of lawyer's fees, expires at:

Time: \_\_\_\_\_  a.m.  p.m.  midnight on (date): \_\_\_\_\_

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**

**5 Hearing**

- a. There was a hearing on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_ in Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
*(Name of judicial officer)*: \_\_\_\_\_ made the orders at the hearing.
- b. These people were at the hearing:
- (1)  The person in ① (3)  The lawyer for the person in ① *(name)*: \_\_\_\_\_  
 (2)  The person in ② (4)  The lawyer for the person in ② *(name)*: \_\_\_\_\_  
 Additional persons present are listed at the end of this Order on Attachment 5.
- c.  The hearing is continued. The parties must return to court on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_.

**To the Person in ②:**

**The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.**

**6  Personal Conduct Orders**

- a. You must **not** do the following things to the person named in ①  
 and to the other protected persons listed in ③:
- (1)  Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.  
 (2)  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.  
 (3)  Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.  
 (4)  Other *(specify)*: \_\_\_\_\_  
 Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).
- b. Peaceful written contact through a lawyer or process server or other person for service of legal papers related to a court case is allowed and does not violate this Order.

**7  Stay-Away Orders**

- a. You **must** stay at least \_\_\_\_\_ yards away from *(check all that apply)*:
- (1)  The person in ① (7)  The place of child care of the children of the person in ①  
 (2)  Each person in ③ (8)  The vehicle of the person in ①  
 (3)  The home of the person in ① (9)  Other *(specify)*: \_\_\_\_\_  
 (4)  The job or workplace of the person in ① \_\_\_\_\_  
 (5)  The school of the person in ① \_\_\_\_\_  
 (6)  The school of the children of the person in ① \_\_\_\_\_

**This is a Court Order.**



b. This stay-away order does not prevent you from going to or from your home or place of employment.

**8 No Guns or Other Firearms and Ammunition**

- a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**
- b. If you have not already done so, you must:
  - Within 24 hours of being served with this Order, sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control.
  - File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form CH-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.)*
- c.  The court has received information that you own or possess a firearm.

**9  Lawyer's Fees and Costs**

The person in \_\_\_ must pay to the person in \_\_\_ the following amounts for:

- a.  Lawyer's fees
- b.  Costs

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

Additional items and amounts are attached at the end of this Order on Attachment 9.

**10  Possession and Protection of Animals**

- a.  The person in **1** is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.  
*(Identify animals by, e.g., type, breed, name.)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- b.  The person in **2** must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**11  Other Orders (specify):**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional orders are attached at the end of this Order on Attachment 11.

**This is a Court Order.**



**To the Person in ① :**

**⑫ Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). (*Check one*):

- a.  The clerk will enter this Order and its proof-of-service form into CARPOS.
- b.  The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.
- c.  By the close of business on the date that this Order is made, the person in ① or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency \_\_\_\_\_

Address (*City, State, Zip*) \_\_\_\_\_

- Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

**⑬ Service of Order on Restrained Person**

- a.  The person in ② personally attended the hearing. No other proof of service is needed.
- b.  The person in ② did not attend the hearing.
  - (1)  Proof of service of Form CH-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form CH-110 except for the expiration date. The person in ② must be served with this Order. Service may be by mail.
  - (2)  The judge's orders in this form are different from the temporary restraining orders in Form CH-110. Someone—but not anyone in ① or ③—must personally serve a copy of this Order on the person in ②.

**⑭  No Fee to Serve (Notify) Restrained Person**

The sheriff or marshal will serve this Order without charge because:

- a.  The Order is based on unlawful violence, a credible threat of violence, or stalking.
- b.  The person in ① is entitled to a fee waiver.

**⑮** Number of pages attached to this Order, if any: \_\_\_\_\_

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

\_\_\_\_\_  
*Judicial Officer*

**This is a Court Order.**



## Warning and Notice to the Restrained Person in ②:

### You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item ⑧ above. The court will require you to prove that you did so.

## Instructions for Law Enforcement

### Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

### Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item ④ on page 1.

### Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

### Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

### If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

**This is a Court Order.**



**Conflicting Orders—Priorities of Enforcement**

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities:** (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO*: If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

*Clerk's Certificate*  
[seal]

*(Clerk will fill out this part.)*  
**—Clerk's Certificate—**

I certify that this *Civil Harassment Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**

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.

**DRAFT**

**NOT APPROVED BY THE JUDICIAL COUNCIL**

**1 Elder or Dependent Adult in Need of Protection**

a. Full Name: \_\_\_\_\_  
 Sex:  M  F Age: \_\_\_\_\_

**2 Person From Whom Protection Is Sought**

Full Name: \_\_\_\_\_  
 Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fill in court name and street address:

**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.: \_\_\_\_\_

Court fills in case number when form is filed.

**Case Number:**

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.)

**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 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. Attach a sheet of paper and write "Attachment 6a—Additional Protected Persons" for a title. You may use Form MC-025, Attachment.

- 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):

	<u>Kind of Case</u>	<u>Filed in (County/State)</u>	<u>Year Filed</u>	<u>Case Number (if known)</u>
(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.

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(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.

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(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.

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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.

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**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 any of the following things to the person in **1** or to any person 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.*

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*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*): \_\_\_\_\_

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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.*

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**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.*

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**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 or store with 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.*

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**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.*

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**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**  **Possession and Protection of Animals**

I ask the court to order the following:

a.  That the person in **1** be given the sole possession, care, and control of the animals listed below, which he/she owns, possesses, leases, keeps, or holds, or which reside in his/her household. (Identify animals by, e.g., type, breed, name.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  That the person in **2** must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**This is not a Court Order.**





Clerk stamps date here when form is filed.

Person in ① must complete items ①, ② and ③ only.

**DRAFT**  
**NOT APPROVED BY THE**  
**JUDICIAL COUNCIL**

**① Protected Elder or Dependent Adult**

a. Full Name: \_\_\_\_\_

Person requesting protection for the elder or dependent adult, if different (person named in item ③ of Form EA-100):

Full Name: \_\_\_\_\_

Lawyer for person named above (if any, 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 want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

**② Restrained Person**

Full Name: \_\_\_\_\_

Description:

Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Height: _____	Weight: _____	Date of Birth: _____
Hair Color: _____	Eye Color: _____	Age: _____	Race: _____
Home Address (if known): _____			
City: _____		State: _____	Zip: _____
Relationship to Protected Person: _____			

**③ Additional Protected Persons**

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of that person are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

**④ Expiration Date**

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____	Time: _____	<input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
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**This is a Court Order.**



**To the Person in 2 :**

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail for up to one year, pay a fine of up to \$1,000, or both .

**5 Personal Conduct Orders**

Not Requested     Denied Until the Hearing     Granted as Follows:

a. You must **not** do the following things to the elder or dependent adult named in 1

and to the other protected persons listed in 3 :

- (1)  Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
- (2)  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 messages, by fax, or by other electronic means.
- (3)  Take any action to obtain the person's address or location. If this item 3 is not checked, the court has found good cause not to make this order.
- (4)  Other (specify):  
 Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in 1.

**6 Stay-Away Orders**

Not Requested     Denied Until the Hearing     Granted as Follows:

a. You **must** stay at least \_\_\_\_\_ yards away from (check all that apply):

- (1)  The elder or dependent adult in 1                      (5)  The vehicle of the person in 1
- (2)  Each person in 3    (6)  Other (specify):
- (3)  The home of the elder or dependent adult                      \_\_\_\_\_
- (4)  The job or workplace of the elder or dependent adult                      \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. This stay-away order does not prevent you from going to or from your home or place of employment.

**7 Move-Out Order**

Not Requested     Denied Until the Hearing     Granted as Follows:

You must immediately move out from and not return to (address):

\_\_\_\_\_  
\_\_\_\_\_

**This is a Court Order.**



**8 No Guns or Other Firearms and Ammunition**

**Not Issued (financial abuse only)**                       **Granted as Follows:**

**This order must be granted unless only financial abuse is alleged.**

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
  - (1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
  - (2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form EA-800, Proof of Firearms Turned In, Sold, or Stored, for the receipt.)*
- c.  The court has received information that you own or possess a firearm.

**9 Financial Abuse**

This case  does **not**             does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

**10 Possession and Protection of Animals**

**Not Requested**             **Denied Until the Hearing**             **Granted as Follows (specify):**

a.  The person in **1** is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  The person in **2** must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**11 Other Orders**

**Not Requested**             **Denied Until the Hearing**             **Granted as Follows (specify):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional orders are attached at the end of this Order on Attachment 11.

**This is a Court Order.**



**To the Person in ① :**

**⑫ Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). (*Check one*):

- a.  The clerk will enter this Order and its proof-of-service form into CARPOS.
- b.  The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.
- c.  By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency

Address (City, State, Zip)

\_\_\_\_\_  
\_\_\_\_\_

Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

**⑬ No Fee to Serve (Notify) Restrained Person**

If the sheriff or marshal serves this Order, he or she will do it for free.

**⑭** Number of pages attached to this Order, if any: \_\_\_\_\_

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

\_\_\_\_\_  
*Judicial Officer*

**This is a Court Order.**



## Warnings and Notices to the Restrained Person in 2

### Possession of Guns or Firearms

If the court grants the orders in item ⑧, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item ⑧. The court will require you to prove that you did so.

### Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and Form EA-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item ②.

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

### After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read Form EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have Form EA-120 served on the person in ① (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign Form EA-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

## Instructions for Law Enforcement

### Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

**This is a Court Order.**

**Start Date and End Date of Orders**

This order *starts* on the date next to the judge’s signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

**Arrest Required if Order Is Violated**

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

**Notice/Proof of Service**

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person “served” (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

**If the Protected Person Contacts the Restrained Person**

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

**Conflicting Orders—Priorities of Enforcement**

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities:** (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO*: If one of the orders is an *Emergency Protective Order* (Form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

**—Clerk's Certificate—**

Clerk’s Certificate  
[seal]

I certify that this *Temporary 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.**

**Response to Request for Elder or Dependent Adult Abuse Restraining Orders**

*Clerk stamps date here when form is filed.*

**Use this form to respond to the Request (Form EA-100)**

- Read *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders? (Form EA-120-INFO)*, to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person requesting protection in ① by mail with a copy of this form and any attached pages. (Use Form EA-250, Proof of Service of Response by Mail.)

**DRAFT  
NOT APPROVED BY THE  
JUDICIAL COUNCIL**

**① Elder or Dependent Adult Seeking Protection**

Name: \_\_\_\_\_

Name of person asking for the protection, if different (*This is the person named in item ③ of the request (Form EA-100).*):

*Fill in court name and street address:*

**Superior Court of California, County of**

**② Person From Whom Protection Is Sought**

a. Your Name: \_\_\_\_\_

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

*Court fills in case number when form is filed.*

**Case Number:**

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Present your response and any opposition at the hearing. Write your hearing date, time, and place from Form EA-109 item ③ here:

**Hearing Date** → Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**If you were served with a Temporary Restraining Order, you must obey it until the hearing.** At the hearing, the court may make orders against you that last for up to five years.

**③  Personal Conduct Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested.
- c.  I agree to the following orders (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**④  Stay-Away Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested.
- c.  I agree to the following orders (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



- 5**  **Move Out Orders**
- a.  I agree to the orders requested.
  - b.  I do not agree to the orders requested.
  - c.  I agree to the following orders (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 6**  **Additional Protected Persons**
- a.  I agree that the persons listed in item **6** of Form EA-100 may be protected by the order requested.
  - b.  I do not agree that the persons listed in item **6** of Form EA-100 may be protected by the order requested.

- 7**  **Guns or Other Firearms and Ammunition**
- If you were served with Form EA-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. (See item **8** of Form EA-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with Form EA-110. You must file a receipt with the court. You may use Form EA-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.**
- a.  I do not own or control any guns or firearms.
  - b.  I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.  
 A copy of the receipt  is attached.  has already been filed with the court.

- 8**  **Possession and Protection of Animals**
- a.  I agree to the orders requested.
  - b.  I do not agree to the orders requested.
  - c.  I agree to the following orders (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 9**  **Other Orders**
- a.  I agree to the orders requested.
  - b.  I do not agree to the orders requested.
  - c.  I agree to the following orders (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 10**  **Denial**
- I did not do anything described in item **7** of Form EA-100. (*Skip to **11**.*)

**11**  **Justification or Excuse**

If I did some or all of the things that the person in **1** has accused me of, my actions were justified or excused for the following reasons (*explain*):

Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use Form MC-025, Attachment.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12**  **Lawyer's Fees and Costs**

a.  I ask the court to order payment of my  Lawyer's fees  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 11—Lawyer's Fees and Costs" for a title.

b.  I ask the court to deny the request of the person asking for protection named in **1** that I pay his or her lawyer's fees and costs.

**13** 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: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Sign your name*

Clerk stamps date here when form is filed.

Person in ① must complete items ①, ②, and ③ only.

**DRAFT**  
**NOT APPROVED BY THE JUDICIAL COUNCIL**

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

**① Elder or Dependent Adult Seeking Protection**

a. Full Name: \_\_\_\_\_  
 Name of person asking for the protection, if different (This is the person named in item ③ of the request (Form EA-100).):  
Full Name: \_\_\_\_\_  
Lawyer for person named above (if any 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 want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**② Restrained Person**

Full Name: \_\_\_\_\_

Description:

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Race: \_\_\_\_\_  
Home Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Relationship to Protected Person: \_\_\_\_\_

**③  Additional Protected Persons**

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of the elder or dependent adult named in ① are protected by the orders indicated below:

<u>Full Name</u>	<u>Sex</u>	<u>Age</u>	<u>Lives with you?</u>	<u>Relation to Protected Person</u>
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

**④ Expiration Date**

This Order, except for any award of lawyer's fees, expires at:

Time: \_\_\_\_\_  a.m.  p.m.  midnight on (date): \_\_\_\_\_

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**



**5 Hearing**

- a. There was a hearing on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_ in Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
*(Name of judicial officer)*: \_\_\_\_\_ made the orders at the hearing.
- b. These people were at the hearing:
- (1)  The elder or dependent adult in need of protection
  - (2)  The lawyer for the elder or dependent adult *(name)*: \_\_\_\_\_
  - (3)  The person in ① asking for protection (if not the elder or dependent adult)
  - (4)  The lawyer for the person in ① asking for protection *(name)*: \_\_\_\_\_
  - (5)  The person in ②
  - (6)  The lawyer for the person in ② *(name)*: \_\_\_\_\_
- Additional persons present are listed at the end of this Order on Attachment 5.
- c.  The hearing is continued. The parties must return to court on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_.

**To the Person in ②:**

**The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.**

**6  Personal Conduct Orders**

- a. You must **not** do the following things to the elder or dependent adult named in ①
- and to the other protected persons listed in ③:
  - (1)  Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
  - (2)  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.
  - (3)  Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
  - (4)  Other *(specify)*: \_\_\_\_\_  
 Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).
- b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

**7  Stay-Away Orders**

- a. You **must** stay at least \_\_\_\_\_ yards away from *(check all that apply)*:
- (1)  The elder or dependent adult in ①
  - (2)  Each person in ③
  - (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)*: \_\_\_\_\_

**This is a Court Order.**



7 b. This stay-away order does not prevent you from going to or from your home or place of employment.

8  **Move Out Order**  
You must immediately move out from and not return to (address):

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and must take only the personal clothing and belongings you need.

9  **No Guns or Other Firearms and Ammunition**  
**This Order must be granted unless the abuse is financial only.**

- a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**
- b. If you have not already done so, you must:
  - Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
  - File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. (You may use Form EA-800, Proof of Firearms Turned In, Sold, or Stored for the receipt.)
- c.  The court has received information that you own or possess a firearm.

10 **Financial Abuse**

This case does **not** does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

11  **Possession and Protection of Animals**

a.  The person in ① is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.  
(Identify animals by, e.g., type, breed, name.)

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b.  The person in ② must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

**This is a Court Order.**





**15 Service of Order on Restrained Person**

- a.  The person in ② personally attended the hearing. No other proof of service is needed.
- b.  The person in ① was at the hearing. The person in ② was not.
- (1)  Proof of service of Form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form EA-110 except for the end date. The person in ② must be served with this Order. Service may be by mail.
- (2)  Proof of service of Form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are different from the orders in Form EA-110. Someone—but not anyone in ① or ③—must personally serve a copy of this Order on the person in ②.

**16 No Fee to Serve (Notify) Restrained Person**

If the sheriff or marshal serves this Order, he or she will do so for free.

**17** Number of pages attached to this Order, if any: \_\_\_\_\_

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



\_\_\_\_\_  
Judicial Officer

**Warning and Notice to the Restrained Person in ② :**
**You Cannot Have Guns or Firearms**

If the court grants the orders in item ⑨ on page 3, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item ⑨. The court will require you to prove that you did so.

**Instructions for Law Enforcement**
**Enforcing the Restraining Order**

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

**Start Date and End Date of Orders**

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

**This is a Court Order.**

**Arrest Required if Order Is Violated**

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

**Notice/Proof of Service**

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person “served” (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

**If the Protected Person Contacts the Restrained Person**

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

**Conflicting Orders—Priorities of Enforcement**

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities:** (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO*: If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk’s Certificate

[seal]

(Clerk will fill out this part.)

**—Clerk’s Certificate—**

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**



CHILD'S NAME:	CASE NUMBER:
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5. The person to be restrained has *(check at least one box)*:

- a.  assaulted or attempted to assault one or more of the persons to be protected
- b.  caused, threatened, or attempted bodily injury on one or more of the persons to be protected
- c.  caused one or more of the persons to be protected to fear physical or emotional harm
- d.  sexually assaulted or attempted to sexually assault one or more of the persons to be protected
- e.  stalked one or more of the persons to be protected
- f.  other *(specify)*:

6. **Description of conduct** *(describe in detail the most recent incidents supporting this application or attach copies of reports of law enforcement officers)*:

Check here if there is not enough space for your answer. Put your complete description on an attached piece of paper and write "Attachment 6" as a title. Number of pages attached: \_\_\_\_\_

7.  A criminal protective order on form CR-160 is in effect against the person sought to be restrained:
- a.  Case number: \_\_\_\_\_ expiration date: \_\_\_\_\_
  - b.  County *(if known)*: \_\_\_\_\_
  - c.  Person protected by order: \_\_\_\_\_
  - d.  Person restrained by order: \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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**8. Requested orders**

- a.  Restrained person must not harass, molest, attack, strike, stalk, threaten, sexually assault, batter, destroy the personal property of, or disturb the peace of any person or persons named in item 1.
- b.  Restrained person must not contact (either directly or indirectly), by mail or otherwise, any person named in item 1.
  - (1)  except for brief and peaceful contact as required for court-ordered visitation of children, unless a criminal protective order says otherwise
  - (2)  except for peaceful written contact through a process server or another person to serve legal papers related to a court case
- c.  Restrained person must move immediately from *(address)*:
 

and take only personal clothing and effects.
- d.  Restrained person must stay at least *(specify)*: \_\_\_\_\_ yards away from the following persons and places *(the addresses of these places are optional and may be kept confidential)*:
  - (1)  Protected persons named in item 1.
  - (2)  The residence of the person or people listed in item 1 *(address optional)*:
  - (3)  The workplace of the person or people listed in item 1 *(address optional)*:
  - (4)  Child's school or place of child care *(address optional)*:
  - (5)  The vehicle of the person or people listed in item 1 *(description optional)*:
  - (6)  Other *(specify)*: \_\_\_\_\_  
*(address optional)*:
- e.  Restrained person must not take any action to get the address or location of any person named in item 1 or the addresses or locations of the family members, caregivers, or guardians of any persons named in item 1. *(If this box is not checked, the court has found good cause not to make this order.)* Peaceful written contact through a lawyer or through a process server or another person in order to serve legal papers is allowed and does not violate this order.
- f. Restrained person must sell or give up any firearms that he or she has or controls for a period not to exceed the duration of the restraining order. Describe in item 6 any use of or threat regarding use of firearms. Petitioner believes the restrained person has the following firearms *(specify)*:
- g.  The child is a ward or the subject of a petition under Welfare and Institutions Code section 601 or 602 and must not contact, threaten, stalk, or disturb the peace of *(list names)*:

h.  Possession and protection of animals

- (1)  Protected person *(name:)* \_\_\_\_\_ is given sole possession, care, and control of the following animals *(Identify animals by, e.g. type, breed, name.)*: \_\_\_\_\_  
 I ask for the animals to be with the person listed above because: \_\_\_\_\_
- (2)  Restrained person must stay at least \_\_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

CHILD'S NAME:	CASE NUMBER:
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i.  Other requested orders:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

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>DRAFT 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: _____		
CASE NAME: _____		
<b>NOTICE OF HEARING <input type="checkbox"/> AND TEMPORARY RESTRAINING ORDER—JUVENILE</b>		CASE NUMBER: _____ JUVENILE: _____ FAMILY: _____

**1. Protected person or persons**

Full Name: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_ Relationship to Child: \_\_\_\_\_

**2. Restrained person**

Full Name: _____					
Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Height: _____	Weight: _____	Hair Color: _____	Eye Color: _____	
Race: _____		Age: _____		Date of Birth: _____	
Address (if known): _____					
City: _____		State: _____		Zip: _____	

**3. Expiration date/Notice of court hearing**

**A court hearing is scheduled on the request for restraining orders against the person in item 2.** Any temporary orders granted will expire at the end of the hearing scheduled for the date and time shown in the box below unless otherwise ordered. At the hearing, the judge may make restraining orders that could last up to three years.

<div style="border: 1px solid black; border-radius: 15px; padding: 5px; display: inline-block;"> <b>Hearing Date &amp; Time</b> </div>	→ Date: _____ Time: _____ Dept.: _____ Room: _____	Name and address of court if different from above: _____
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CASE NAME:	CASE NUMBER:
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4.  Hearing on this temporary restraining order
- a. Date hearing held: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- b. Judicial officer (*name*): \_\_\_\_\_
- c. Persons and attorneys present (*names*): \_\_\_\_\_

5.  Temporary orders (*select one*)
- a.  Granted. The court has granted the temporary orders that are checked below.
- b.  Not granted. No temporary orders are granted pending the scheduled hearing in item 3.

**THE COURT FINDS AND ORDERS**

6.  Restrained person (child in delinquency proceedings) (*Complete either 6 or 7, not both.*)
- a. \_\_\_\_\_ is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
- b.  \_\_\_\_\_ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No.: \_\_\_\_\_ issued on (*date*): \_\_\_\_\_, as an exception to the "no-contact" provision in item 6a of this order.
- c.  \_\_\_\_\_ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 6a of this order.

7.  Restrained person (other than child in delinquency proceeding) (*Complete either 6 or 7, not both.*)
- a. **must not do the following things to anyone in item 1:**
- (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
- (2)  Contact, 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.  
 \_\_\_\_\_ except for visitation as indicated in c below.
- b.  **must stay away** at least (*specify*): \_\_\_\_\_ yards from (*check all that apply*).
- (1)  anyone in item 1, except for visitation as indicated in item c below.
- (2)  home of anyone in item 1.
- (3)  job or workplace of anyone in item 1.
- (4)  vehicle of anyone in item 1.
- (5)  school of anyone in item 1.
- (6)  the child(ren)'s school or child care.
- (7)  Other (*specify*): \_\_\_\_\_  
 \_\_\_\_\_ except for visitation as indicated in item c below.
- c.  has the right to visit the child(ren) named in item 1 as follows:
- (1)  None
- (2)  Visitation according to the attached schedule (*Form JV-205 must be attached if any visitation is ordered.*)
- d.  **must move** immediately from (*address*): \_\_\_\_\_  
  
 \_\_\_\_\_ and take only personal clothing and belongings.
- e.  **must NOT** take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of any one named in item 1. If this box is not checked, the court has found good cause not to make this order.

CASE NAME:	CASE NUMBER:
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8. **No guns or other firearms or ammunition** *(applies only if box 5a is checked on this form)*
- a. The restrained person cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
  - b. The restrained person must
    - within 24 hours of receiving this order sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control.
    - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. *(Proof of Firearms Turned In, Sold, or Stored (form DV-800/JV-252) may be used for the receipt.)*
    - bring a copy of the receipt or *Proof of Firearms Turned In, Sold, or Stored (form DV-800/JV-252)* to the hearing listed in item 3.
  - c.  The court has received information that the restrained person owns or possesses a firearm.
9.  The protected person(s) have the right to record communications made by the restrained person that violate the court's orders.

10.  **Possession and protection of animals**
- a.  Protected person *(name:)* \_\_\_\_\_ is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept or held by a person protected by this order or residing in the residence or household of a person protected by this order *(Identify animals by, e.g. name, type, breed.):*  
\_\_\_\_\_
  - b.  The restrained person must stay at least \_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

11.  **Other orders** *(specify):*

12.  A criminal protective order on form CR-160 is in effect as follows:  
 Case number: \_\_\_\_\_ Expiration date: \_\_\_\_\_ County *(if known):* \_\_\_\_\_

13. **Transmittal order.** The data in this order must be transmitted within one business day to law enforcement personnel. This order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS).
- a.  The court will enter the order into CARPOS through CLETS directly.
  - b.  The court or its designee will transmit a copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CARPOS through CLETS.

If designee, insert name:

14.  Service of temporary order
- a.  The restrained person was present at the time the order was made. No further service is needed.
  - b.  The restrained person was not present at the time the order was made. This order must be served.

15.  Service of this notice of hearing must be at least  five or  *(specify):* \_\_\_\_\_ days before the hearing.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

CASE NAME:	CASE NUMBER:
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**Warnings to the Restrained Person**

**If you do not obey these orders, you can be arrested and charged with a crime.** You may have to go to jail or prison, pay a fine of up to \$1,000, or both. Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

**You cannot have guns, firearms, or ammunition.** If the box in item 5a is checked, the court issued a temporary restraining order, which means you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while the order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

**Service of order by mail.** If the judge makes a restraining order at the hearing that has the same orders as in this form, you will get a copy of that order by mail at your last known address, which is written in item 2. If this address is not correct, or to find out if the orders were made permanent, contact the court.

**Instruction for Law Enforcement**

**Applicable only if the box in item 5a is checked.**

**Enforcing the restraining order.** This order is effective when made. It is enforceable in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

**Conflicting orders—Priorities for Enforcement.**

**If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b).):**

1. *EPO*: If one of the orders is an *Emergency Protective Order* (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

**Certificate of Compliance With VAWA for Temporary Orders**

This temporary protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265, (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

**CLERK’S CERTIFICATE**

[SEAL] I certify that the foregoing *Temporary Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

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>DRAFT 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: _____		
CASE NAME: _____		
<b>RESTRAINING ORDER—JUVENILE Order After Hearing</b>		CASE NUMBER: _____ JUVENILE: _____ FAMILY: _____

**1. Protected person or persons**

<u>Full Name</u>	<u>Sex</u>	<u>Age</u>	<u>Relationship to Child</u>
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**2. Restrained person**

Full Name:	Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Height:	Weight:	Hair Color:	Eye Color:
Race:		Age:		Date of Birth:	
Address (if known): _____					
City:		State:		Zip:	

**3. Order after hearing**

- a. This order after hearing expires on (date and time):
  - If no expiration date is written, the restraining order ends three years after the date of the hearing, as indicated below.
  - If no time is written, the restraining order ends at midnight on the expiration date.
- b. Date hearing held: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- c. Judicial officer (name): \_\_\_\_\_
- d. Persons and attorneys present (names): \_\_\_\_\_
  
- e.  The restrained person was present. No further service is needed.
- f.  The restrained person was not present. This order must be served.
  - (1)  The orders on this form are the same as in the prior temporary restraining order except for the expiration date, and the temporary order and notice of hearing was personally served on the restrained person. The restrained person can be served by mail.
  - (2)  The orders on this form are different from those in the prior temporary restraining order. An adult 18 years or older—not the person or persons to be protected—must personally serve a copy of this order on the restrained person.

CASE NAME:	CASE NUMBER:
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**THE COURT FINDS AND ORDERS**

4.  Restrained person (child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
- a.  is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
  - b.  may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No. \_\_\_\_\_ issued on *(date)*: \_\_\_\_\_, as an exception to the "no-contact" provision in item 4a of this order.
  - c.  may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 4a of this order.
5.  Restrained person (other than child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
- a. **must not do the following things to anyone in item 1:**
    - (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
    - (2)  Contact, 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  
 except for visitation as indicated in c below.
  - b.  **must stay away** at least *(specify)*: \_\_\_\_\_ yards from *(check all that apply)*
    - (1)  anyone in item 1, except for visitation as indicated in item c below.
    - (2)  home of anyone in item 1.
    - (3)  job or workplace of anyone in item 1.
    - (4)  vehicle of anyone in item 1.
    - (5)  school of anyone in item 1.
    - (6)  the children's school or child care.
    - (7)  Other *(specify)*: \_\_\_\_\_  
 except for visitation as indicated in c below
  - c.  has the right to visit the child(ren) named in item 1 as follows:
    - (1)  None
    - (2)  Visitation according to the attached schedule *(Form JV-205 must be attached if any visitation is ordered.)*
  - d.  must move immediately from *(address)*: \_\_\_\_\_  
  
and take only personal clothing and belongings.
  - e.  must NOT take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of anyone named in item 1. If this box is not checked, the court has found good cause not to make this order.
6. **No guns or other firearms or ammunition**
- a. The restrained person cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
  - b. The restrained person must
    - within 24 hours of receiving this order sell to, or store with, a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control.
    - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. *(Proof of Firearms Turned In, Sold, or Stored (form DV-800/JV-252) may be used for the receipt.)*
  - c.  The court has received information that the restrained person owns or possesses a firearm.
7.  A criminal protective order on form CR-160 is in effect as follows:  
 Case number: \_\_\_\_\_ Expiration date: \_\_\_\_\_ County *(if known)*: \_\_\_\_\_
8.  The protected persons have the right to record communications made by the restrained person that violate the judge's orders.

CASE NAME:	CASE NUMBER:
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9.  **Possession and protection of animals**

- a.  Protected person (*name:*) \_\_\_\_\_ is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept or held by a person protected by this order or residing in the residence or household of a person protected by this order (*Identify animals by, e.g. name, type, breed.*):  
\_\_\_\_\_
- b.  The restrained person must stay at least \_\_\_\_ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed above.

10.  **Other orders** (*specify*):

11. **Transmittal order.** The data in this order must be transmitted within one business day to law enforcement personnel. This order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS).

- a.  The court will enter the order into CARPOS through CLETS directly.
- b.  The court or its designee will transmit a copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CARPOS through CLETS.

If designee, insert name:

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

**Warnings to the Restrained Person**

**If you do not obey these orders, you can be arrested and charged with a crime.** You may have to go to jail or prison, pay a fine of up to \$1,000, or both. Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

**You cannot have guns, firearms, or ammunition.** You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while the order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

CASE NAME:	CASE NUMBER:
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### Instruction for Law Enforcement

**Enforcing the restraining order.** This order is effective when made. It is enforceable in all 50 states, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

### Conflicting orders—Priorities for Enforcement.

**If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b).):**

1. *EPO*: If one of the orders is an *Emergency Protective Order* (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

### Certificate of Compliance With VAWA for Orders After Hearing

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been afforded reasonable notice and an opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

### CLERK'S CERTIFICATE

[SEAL]

I certify that the foregoing *Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Title:

Technology: Modernization of the Rules of Court to Facilitate E Business, E Filing, and E-Service (Phase II of the Rules Modernization Project)

Proposed Rules, Forms, Standards, or Statutes: Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.

*Committee or other entity submitting the proposal:*

Information Technology Advisory Committee (ITAC)

Civil and Small Claims Advisory Committee (CSCAC)

Family & Juvenile Law Advisory Committee (FJLAC)

*Staff contact (name, phone and e-mail):*

Tara Lundstrom, 415-865-7650, tara.lundstrom@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Judicial Council Technology Committee approved ITAC's Annual Agenda on January 11, 2016

RUPRO approved CSCAC's and FJLAC's Agenda approved on December 10, 2015

Project description from annual agenda:

ITAC's Annual Agenda Item 7:

Modernize Rules of Court Modernize Trial and Appellate Court Rules to Support E-Business Major Tasks: (a) In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

CSCAC's Annual Agenda Item 21:

Rules Modernization Project – Phase 2. Assist Information Technology Advisory Committee (ITAC) in its Rules Modernization Project, a collaborative multi-year effort to comprehensively review and modernize statutes and rules so that they will be consistent with and foster modern e-business practices. Examples of potential areas identified last year as possible Phase 2 topics for action in 2016 include rules and statutes regarding the return of lodged materials, formatting of motion papers and tabbing of exhibits, timing of notice when provided by electronic service.

FJLAC's Annual Agenda Item 18:

Rules Modernization Project Each advisory committee has been asked to include in their annual agenda for 2015 and 2016 an item providing for the drafting of proposed amendments to the California Rules of Court related to their subject matter areas. This effort would be undertaken in coordination with ITAC, which is responsible for developing and completing the overall rules modernization project.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392	January 1, 2017
	Contact
	Tara Lundstrom, 415-865-7650 tara.lundstrom@jud.ca.gov
Proposed by	
Information Technology Advisory Committee Hon. Terence L. Bruiniers, Chair	
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Information Technology Advisory Committee, the Civil and Small Claims Advisory Committee, and the Family and Juvenile Law Advisory Committee recommend amending various rules in titles 2, 3, and 5 of the California Rules of Court as part of phase II of the Rules Modernization Project. These proposed amendments are substantive changes to the rules that are intended to promote electronic filing, electronic service, and modern e-business practices.

### Background

The Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a multiyear effort to comprehensively review and modernize the California Rules of

*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.*

Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with other advisory committees, including the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee (FJLAC), with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. Last year, the advisory committees completed phase I: an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. This year, the committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

### **The Proposal**

This proposal includes new formatting rules for electronic documents. It also includes proposed amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

The proposed amendments to rules in titles 2 and 3 have been reviewed and recommended by ITAC and CSCAC; those in title 5 have been reviewed and recommended by ITAC and FJLAC.

### **Formatting of electronically filed documents**

Rule 2.256(b) states the formatting requirements for documents that are electronically filed in the trial courts. This proposal would add references to rule 2.256(b) in rules 2.100, 2.114, and 2.104 to clarify that the formatting requirements in rule 2.256(b) apply to electronically filed “papers,” exhibits, and forms.

***Text-searchable electronic “papers.”*** This proposal would amend rule 2.256(b) to provide that an electronically filed document must be text searchable unless it is an exhibit or Judicial Council form. This requirement would apply to “papers,” which are defined in rule 2.3(2) as “all documents except exhibits, copies of exhibits that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions.” This proposal is intended to discourage litigants from printing and scanning “papers” before electronically filing them, which creates documents that are not text searchable.

Because converting from a document created with word processing software to portable document format (“PDF”) may result in a slight reduction or enlargement of font size in the document, this proposal would amend rule 2.118 by adding a new subdivision (a)(3) to provide that a clerk may not reject papers for filing solely because “[t]he font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF format.”

***Electronic bookmarks for exhibits.*** This proposal would amend rule 3.1110(f) to require that electronic exhibits contain electronic bookmarks, unless they are submitted by a self-represented litigant. The electronic bookmarks must have (1) links to the first page of each exhibit and (2) titles that identify the exhibit number or letter and briefly describe the exhibit. This proposal would add an Advisory Committee Comment that would state that, under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free. In addition, this proposal would amend rule 3.1113(i) to require electronic bookmarking where authorities or cases are lodged in electronic form.

### **Page numbering**

This proposal would amend the rules governing pagination for “papers,” motion documents, and motion memoranda—rules 2.109, 3.1110(c), and 3.1113(h)—to provide that page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3) and that the page number need not appear on the first page. These proposed amendments recognize that judicial officers find it easier to navigate electronic documents when the page number in the footer matches the page number of the electronic document. To provide for consistency, this method of page numbering would apply to both electronic and paper documents, and, as a result, the pages of tables of content in memoranda will no longer be paginated using lower-case Roman numerals.<sup>1</sup>

To ensure that the proposed amendment to rule 3.1113(h) would not alter the number of pages allowed for memoranda, this proposal would also amend rule 3.1113(d) by providing that caption pages are not counted in determining whether a memorandum exceeds the page limit. Subdivision (d) already provides that exhibits, declarations, attachments, the table of contents, the table of authorities, and the proof of service are not counted.

### **Proof of electronic service**

This proposal would amend rule 2.251(i) to conform the requirements for proof of electronic service to the statutes and rules governing electronic service. It would also eliminate the requirement that the person filling out the proof of electronic service state the time of electronic service.

***Electronic service by a party.*** In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of service by mail in Code of Civil Procedure section 1013a, subject to several exceptions. Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that the “the person making the service” is “not a party to the cause,” and subdivision (i) of rule 2.251 does not currently provide an exception to this requirement. However, subdivision (e) of rule 2.251 and the statute governing electronic service expressly allow for electronic service by a party. (See Code Civ.

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<sup>1</sup> In an Invitation to Comment that is also circulating this rules cycle, the Information Technology Advisory Committee and the Appellate Advisory Committee have recommended similar amendments to the pagination requirements in rules 8.204(b) and 8.74(b) for appellate briefs and for documents that are electronically filed in the appellate courts.

Proc., § 1010.6(a)(1)(A).) To eliminate this internal inconsistency, this proposal would add another exception to rule 2.251(i) to recognize that parties may electronically serve documents.

***Time of electronic service.*** This proposal would amend rule 2.251(i)(1) to remove the requirement that the proof of electronic service state the time of electronic service. In practice, this requirement has proved unworkable: the person filling out the proof of electronic service will not know the precise time of electronic service until after the document is served. Because this requirement also appears in the proof of service for fax filing, this proposal would make the same change to rule 2.306(h)(1).

### **Paper courtesy copies**

At present, the rules are silent as to whether paper courtesy copies may be required when documents are filed electronically. This proposal would add a new subdivision (i) to 2.252 to provide that a judge may request that electronic filers submit paper courtesy copies of an electronically filed document.

### **“Return” of lodged records**

During phase I of the Rules Modernization Project, the Judicial Council amended rule 3.1302(b) to provide for the return of materials lodged in electronic form. The advisory committees and commentators raised concerns that the rule language regarding the return of electronic materials meant that the court would be required to delete the electronic record maintained in its document management system. The advisory committees also expressed concerns about providing notice to the submitting party that the court no longer retained the lodged materials. Based on these concerns, the committees decided to revisit these rules this year and provide for a new process that addresses these concerns.

This proposal would amend the rules addressing lodged materials—rules 2.551(b)(6), 2.577(d)(4), and 3.1302(b)—to provide a new process for “returning” materials lodged in electronic form. The proposed amendment to rules 2.551(b)(6), 2.577(d)(4), and 3.1302(b) would instruct court staff to permanently delete the lodged record if in electronic form and to provide notice of the deletion to the submitting party.

### **Additional technical amendments to the rules**

Lastly, this rules proposal would make additional technical amendments to the rules that were not identified during phase I of the Rules Modernization Project. These technical changes include the following:

- Amending rule 2.104 to clarify that the font size must be not smaller than 12 points on papers if they are filed electronically or on paper;
- Amending rule 2.110 to refer to “font” instead of “type”;
- Amending rule 2.111(1) to delete the language “if available” in reference to fax and e-mail addresses on the first page of papers;

- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rules 2.551(f) and 2.577(g) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them;
- Amending rule 3.250(b) to describe the process for retaining the originals of papers that are not filed where the originals are in electronic form;
- Amending rule 3.751 to recognize that a party may agree to electronic service, or a court may require electronic service by local rule or court order, under rule 2.251 in complex civil cases;
- Amending rule 3.823(d) to cross-reference Code of Civil Procedure sections 1013 and 1010.6;
- Amending rule 3.1306 to provide that a party who requests judicial notice of material in electronic form must make arrangements to have it electronically accessible to the court at the time of the hearing;
- Amending rule 3.1362 to recognize that an attorney requesting to be relieved as counsel may serve notice of the motion, the declaration, and the proposed order by electronic means, subject to certain safeguards;
- Amending rule 5.66 to recognize that the proof of service of a response to a petition or complaint may be on *Proof of Electronic Service* (form POS-050/EFS-050);
- Amending rules 5.380(c), 5.390(e), 5.392(b), (d), and (f) to replace the term “mail” and “mailing” with “serve” and “serving”; and
- Amending rule 5.390(e) to recognize that a clerk may file a certificate of electronic service.

### **Alternatives Considered**

In proposing amendments to individual rules, the committees considered various alternatives and have requested comment on several of these alternatives. Specifically, they are asking for comments on (1) whether electronically filed exhibits should be text searchable to the extent feasible; (2) whether the proposal to allow for paper courtesy copies by request of a judge would hinder or promote efforts to move courts toward paperless case environments; and (3) whether concerns about metadata would discourage litigants from converting papers created with word processing software to PDF and instead encourage scanning them and applying Optical Character Recognition (“OCR”) software.<sup>2</sup>

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

The committees expect that the proposed amendments would result in efficiency gains and cost savings for the courts at minimal expense, if any, to litigants. Requiring that electronic papers be text searchable would assist judicial officers and research attorneys, while also saving courts the significant cost and delay of applying OCR software to electronically filed documents. At the

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<sup>2</sup> These concerns include that the metadata associated with a document created in word processing format, including prior revisions made in track changes, may be retained when the document is converted into PDF format.

same time, it is not expected to result in additional costs to litigants, who may readily convert documents created using word processing software, including open source software, to PDF. The conversion process is faster and less expensive than printing and scanning papers.

Electronic bookmarks will facilitate and expedite the review of electronic exhibits by judicial officers and research attorneys. Adding electronic bookmarks to electronic exhibits would not result in any additional costs to litigants as open source software is available. Electronic bookmarks are also cheaper and less time intensive to apply compared to tabbing or separating paper exhibits. Because self-represented parties are exempt from the bookmarking requirement, it would not negatively impact them.

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Should the rules require that electronic exhibits be text searchable to the extent feasible?
- Does the proposal to require that “papers” be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?
- Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?

The advisory committees also seek 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. Proposed amendments to titles 2, pages 7–13
2. Proposed amendments to title 3, pages 14–18
3. Proposed amendments to title 5, pages 19–21

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court would be amended, effective January 1, 2017, to read:

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**Title 2. Trial Court Rules**

**Rule 2.100. Form and format of papers presented for filing in the trial courts**

(a)–(b) \* \* \*

**(c) Electronic format of papers**

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

**Rule 2.103. Size, quality, and color of papers**

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.

**Rule 2.104. ~~Printing;~~ Font size; printing**

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing ~~in a font not smaller than 12 points.~~

**Rule 2.105. Font style**

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

**Rule 2.109. Page numbering**

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number need not appear on the first page.

**Rule 2.110. Footer**

(a)–(b) \* \* \*

1 (c) **Type Font size**

2  
3 The title of the paper in the footer must be in at least 10-point type font.

4  
5 **Rule 2.111. Format of first page**

6  
7 The first page of each paper must be in the following form:

- 8  
9 (1) In the space commencing 1 inch from the top of the page with line 1, to the left of  
10 the center of the page, the name, office address or, if none, residence address or  
11 mailing address (if different), telephone number, fax number and e-mail address (~~if~~  
12 ~~available~~), and State Bar membership number of the attorney for the party in whose  
13 behalf the paper is presented, or of the party if he or she is appearing in person. The  
14 inclusion of a fax number or e-mail address on any document does not constitute  
15 consent to service by fax or e-mail unless otherwise provided by law.

16  
17 (2)–(11) \* \* \*

18  
19 **Rule 2.114. Exhibits**

20  
21 Exhibits submitted with papers not filed electronically may be fastened to pages of the  
22 specified size and, when prepared by a machine copying process, must be equal to  
23 computer-processed materials in legibility and permanency of image. Exhibits submitted  
24 with papers filed electronically must meet the requirements in rule 2.256(b)(1) and (2).

25  
26 **Rule 2.118. Acceptance of papers for filing**

27  
28 (a) **Papers not in compliance**

29  
30 The clerk of the court must not accept for filing or file any papers that do not  
31 comply with the rules in this chapter, except the clerk must not reject a paper for  
32 filing solely on the ground that:

- 33  
34 (1) It is handwritten or hand-printed; ~~or~~  
35  
36 (2) The handwriting or hand printing on the paper is in a color other than  
37 black or blue-black; or  
38  
39 (3) The font size is not exactly the point size required by rules 2.104 and  
40 2.110(c) on papers submitted electronically in portable document  
41 format (PDF). Minimal variation in font size may result from  
42 converting a document created using word processing software to PDF.

1 (b)–(c) \* \* \*

2  
3 **Rule 2.140. Judicial Council forms**

4  
5 Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1.  
6 Electronic Judicial Council forms must meet the requirements in rule 2.256(b)(1) and (2).

7  
8 **Rule 2.251. Electronic service**

9  
10 (a)–(h) \* \* \*

11  
12 (i) **Proof of service**

13  
14 (1) Proof of electronic service may be by any of the methods provided in Code of  
15 Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

16  
17 (A) The proof of electronic service does not need to state that the person  
18 making the service is not a party to the case.

19  
20 (B) The proof of electronic service must state:

21  
22 (A) (1) The electronic service address of the person making the  
23 service, in addition to that person’s residence or business address;

24  
25 (B) (2) The date ~~and time~~ of the electronic service, instead of the date  
26 and place of deposit in the mail;

27  
28 (C) (3) The name and electronic service address of the person served,  
29 in place of that person’s name and address as shown on the  
30 envelope; and

31  
32 (D) (4) That the document was served electronically, in place of the  
33 statement that the envelope was sealed and deposited in the mail  
34 with postage fully prepaid.

35  
36 (2) \* \* \*

37  
38 (3) Under rule 3.1300(c), proof of electronic service of the moving papers must  
39 be filed at least five court days before the hearing.

40  
41 (4) \* \* \*

1 (j) \* \* \*

2  
3 **Rule 2.252. General rules on electronic filing of documents**

4  
5 (a)–(h) \* \* \*

6  
7 **(i) Paper courtesy copies**

8  
9 A judge may request that electronic filers submit paper courtesy copies of an  
10 electronically filed document.

11  
12 **Rule 2.256. Responsibilities of electronic filer**

13  
14 (a) \* \* \*

15  
16 **(b) Format of documents to be filed electronically**

17  
18 A document that is filed electronically with the court must be in a format specified  
19 by the court unless it cannot be created in that format. The format adopted by a  
20 court must meet the following requirements:

21  
22 (1)–(2) \* \* \*

23  
24 **(3) The document must be text searchable, unless it is an exhibit or Judicial**  
25 **Council or local form.**

26  
27 If a document is filed electronically under the rules in this chapter and cannot be  
28 formatted to be consistent with a formatting rule elsewhere in the California Rules  
29 of Court, the rules in this chapter prevail.

30  
31 **Rule 2.306. Service of papers by fax transmission**

32  
33 (a)–(g) \* \* \*

34  
35 **(h) Proof of service by fax**

36  
37 Proof of service by fax may be made by any of the methods provided in Code of  
38 Civil Procedure section 1013(a), except that:

39  
40 (1) The ~~time~~, date, and sending fax machine telephone number must be used  
41 instead of the date and place of deposit in the mail;

42  
43 (2)–(5) \* \* \*

1  
2 **Rule 2.551. Procedures for filing records under seal**

3  
4 (a) \* \* \*

5  
6 (b) **Motion or application to seal a record**

7  
8 (1)–(2) \* \* \*

9  
10 (3) *Procedure for party not intending to file motion or application*

11  
12 (A) \* \* \*

13  
14 (B) If the party that produced the documents and was served with the notice  
15 under (A)(iii) fails to file a motion or an application to seal the records  
16 within 10 days or to obtain a court order extending the time to file such  
17 a motion or an application, the clerk must promptly ~~remove~~ transfer all  
18 the documents in (A)(i) from the envelope, container, or secure  
19 electronic file ~~where they are located and place them in~~ to the public  
20 file. If the party files a motion or an application to seal within 10 days  
21 or such later time as the court has ordered, these documents are to  
22 remain conditionally under seal until the court rules on the motion or  
23 application and thereafter are to be filed as ordered by the court.

24  
25 (4)–(5) \* \* \*

26  
27 (6) *Return of lodged record*

28  
29 If the court denies the motion or application to seal, the clerk must either (i)  
30 return the lodged record if in paper form to the submitting party and or (ii)  
31 permanently delete the lodged record if in electronic form and send notice of  
32 the deletion to the submitting party. The clerk must not place ~~it~~ the lodged  
33 record in the case file unless that party notifies the clerk in writing that the  
34 record is to be filed. Unless otherwise ordered by the court, the submitting  
35 party must notify the clerk within 10 days after the order denying the motion  
36 or application.

37  
38 (c)–(d) \* \* \*

39  
40 (e) **Order**

41  
42 (1) If the court grants an order sealing a record and if the sealed record is in  
43 paper format, the clerk must substitute on the envelope or container for the

1 label required by (d)(2) a label prominently stating “SEALED BY ORDER  
2 OF THE COURT ON (DATE),” and must replace the cover sheet required by  
3 (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is  
4 in an electronic format, the clerk must file the court’s order, ~~store~~ maintain  
5 the record ordered sealed in a secure manner, and clearly identify the record  
6 as sealed by court order on a specified date.

7  
8 (2)–(4) \* \* \*

9  
10 **(f) Custody of sealed records**

11  
12 Sealed records must be securely filed and kept separate from the public file in the  
13 case. If the sealed records are in electronic form, appropriate access controls must  
14 be established to ensure that only authorized persons may access the sealed records.

15  
16 **(g)–(h) \* \* \***

17  
18 **Rule 2.577. Procedures for filing confidential name change records under seal**

19  
20 **(a) \* \* \***

21  
22 **(b) Application to file records in confidential name change proceedings under seal**

23  
24 An application by a confidential name change petitioner to file records under seal  
25 must be filed at the time the petition for name change is submitted to the court. The  
26 application must be made on the *Application to File Documents Under Seal in*  
27 *Name Change Proceeding Under Address Confidentiality Program (Safe at Home)*  
28 *(form NC-410)* and be accompanied by a *Declaration in Support of Application to*  
29 *File Documents Under Seal in Name Change Proceeding Under Address*  
30 *Confidentiality Program (Safe at Home)* (form NC-420), containing facts sufficient  
31 to justify the sealing.

32  
33 **(c) \* \* \***

34  
35 **(d) Procedure for lodging of petition for name change**

36  
37 (1)–(3) \* \* \*

38  
39 (4) If the court denies the application to seal, the clerk must either (i) return the  
40 lodged record if in paper form to the petitioner or (ii) permanently delete the  
41 lodged record if in electronic form and send notice of the deletion to the  
42 petitioner. The clerk ~~and~~ must not place ~~it~~ the lodged record in the case file  
43 unless the petitioner notifies the clerk in writing within 10 days after the

1 order denying the application that the unsealed petition and related papers are  
2 to be filed.

3  
4 (e) \* \* \*

5  
6 (f) **Order**

7  
8 (1)–(2) \* \* \*

9  
10 (3)– For petitions transmitted in paper form, if the court grants an order sealing a  
11 record, the clerk must strike out the notation required by (d)(2) on the  
12 *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY  
13 UNDER SEAL,” add a notation to that sheet prominently stating “SEALED  
14 BY ORDER OF THE COURT ON (DATE),” and file the documents under  
15 seal. For petitions transmitted electronically, the clerk must file the court’s  
16 order, ~~store~~ maintain the record ordered sealed in a secure manner, and  
17 clearly identify the record as sealed by court order on a specified date.

18  
19 (4)–(5) \* \* \*

20  
21 (g) **Custody of sealed records**

22  
23 Sealed records must be securely filed and kept separate from the public file in the  
24 case. If the sealed records are in electronic form, appropriate access controls must  
25 be established to ensure that only authorized persons may access the sealed records.

26  
27 (h) \* \* \*

28

1 Title 3. Civil Rules

2  
3 Rule 3.250. Limitations on the filing of papers

4  
5 (a) \* \* \*

6  
7 (b) Retaining originals of papers not filed

8  
9 (1) Unless the paper served is a response, the party who serves a paper listed in  
10 (a) must retain the original with the original proof of service affixed. If  
11 served electronically under rule 2.251, the proof of electronic service must  
12 meet the requirements in rule 2.251(i).

13  
14 (2) The original of a response must be served, and it must be retained by the  
15 person upon whom it is served.

16  
17 (3) An original must be retained under (1) or (2) in the paper or electronic form  
18 in which it was created or received.

19  
20 (4) All original papers must be retained until six months after final disposition of  
21 the case, unless the court on motion of any party and for good cause shown  
22 orders the original papers preserved for a longer period.

23  
24 (c) \* \* \*

25  
26 Rule 3.751. Electronic service

27  
28 Parties may consent to electronic service, or the court may require electronic  
29 service by local rule or court order, under rule 2.251. The court may provide in a  
30 case management order that documents filed electronically in a central electronic  
31 depository available to all parties are deemed served on all parties.

32  
33 Rule 3.823. Rules of evidence at arbitration hearing

34  
35 (a)–(c) \* \* \*

36  
37 (d) Delivery of documents

38  
39 For purposes of this rule, “delivery” of a document or notice may be accomplished  
40 manually, by electronic means under Code of Civil Procedure section 1010.6 and  
41 rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section  
42 1013. If service is by electronic means, the times prescribed in this rule for delivery  
43 of documents, notices, and demands are increased as provided by Code of Civil

1 Procedure section 1010.6, ~~by two days~~. If service is in the manner provided by mail  
2 Code of Civil Procedure section 1013, the times prescribed in this rule are  
3 increased as provided by five days that section.

4  
5 **Rule 3.1110. General format**

6  
7 (a)–(b) \* \* \*

8  
9 (c) **Pagination of documents**

10 Documents ~~bound together~~ must be consecutively paginated. ~~If the document is~~  
11 ~~filed electronically,~~ the page numbering must begin with the first page and use  
12 only Arabic numerals (e.g., 1, 2, 3). The page number need not appear on the first  
13 page.

14  
15  
16 (d)–(e) \* \* \*

17  
18 (f) **Format of exhibits**

19  
20 (1) An index of exhibits must be provided. The index must briefly describe the  
21 exhibit and identify the exhibit number or letter and page number.

22  
23 (2) Pages from a single deposition must be designated as a single exhibit.

24  
25 (3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard  
26 paper or plastic tabs extending below the bottom of the page, bearing the  
27 exhibit designation. ~~An index to exhibits must be provided. Pages from a~~  
28 ~~single deposition and associated exhibits must be designated as a single~~  
29 ~~exhibit.~~

30  
31 (4) Electronic exhibits must meet the requirements in rule 2.256(b)(1) and (2).  
32 Unless they are submitted by a self-represented party, electronic exhibits  
33 must include electronic bookmarks with links to the first page of each exhibit  
34 and with bookmark titles that identify the exhibit number or letter and briefly  
35 describe the exhibit.

36  
37 (g) \* \* \*

38  
39 **Advisory Committee Comment**

40  
41 **Subdivision (f)(4).** Under current technology, software programs that allow users to apply  
42 electronic bookmarks to electronic documents are available for free.

1 **Rule 3.1113. Memorandum**

2  
3 (a)–(c) \* \* \*

4  
5 (d) **Length of memorandum**

6  
7 Except in a summary judgment or summary adjudication motion, no opening or  
8 responding memorandum may exceed 15 pages. In a summary judgment or summary  
9 adjudication motion, no opening or responding memorandum may exceed 20 pages. No  
10 reply or closing memorandum may exceed 10 pages. The page limit does not include the  
11 caption page, exhibits, declarations, attachments, the table of contents, the table of  
12 authorities, or the proof of service.

13  
14 (e)–(g) \* \* \*

15  
16 (h) **Pagination of memorandum**

17  
18 ~~(1) The pages of a memorandum must be numbered consecutively beginning with~~  
19 ~~the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number need~~  
20 ~~not appear on the first page.~~

21  
22 ~~(2) Notwithstanding any other rule, a memorandum that includes a table of~~  
23 ~~contents and a table of authorities must be paginated as follows:~~

24  
25 ~~(A) The caption page or pages must not be numbered;~~

26  
27 ~~(B) The pages of the tables must be numbered consecutively using lower-~~  
28 ~~case roman numerals starting on the first page of the tables; and~~

29  
30 ~~(C) The pages of the text must be numbered consecutively using Arabic~~  
31 ~~numerals starting on the first page of the text.~~

32  
33 (i) **Copies of authorities**

34  
35 (1) A judge may require that if any authority other than California cases, statutes,  
36 constitutional provisions, or state or local rules is cited, a copy of the  
37 authority must be lodged with the papers that cite the authority, ~~and~~ If in  
38 paper form, the authority must be tabbed or separated as required by rule  
39 3.1110(f)(3). If in electronic form, the authority must be electronically  
40 bookmarked as required by rule 3.1110(f)(4).

41  
42 (2) If a California case is cited before the time it is published in the advance  
43 sheets of the Official Reports, the party must include the title, case number,

1 date of decision, and, if from the Court of Appeal, district of the Court of  
2 Appeal in which the case was decided. A judge may require that a copy of  
3 that case must be lodged, ~~and~~ If in paper form, the copy must be tabbed or  
4 separated as required by rule 3.1110(f)(3). If in electronic form, the copy  
5 must be electronically bookmarked as required by rule 3.1110(f)(4).  
6

7 (3) \* \* \*

8  
9 (j)–(m) \* \* \*

10  
11 **Rule 3.1302. Place and manner of filing**

12  
13 (a) \* \* \*

14  
15 (b) **Requirements for lodged material**

16  
17 Material lodged physically with the clerk must be accompanied by an addressed  
18 envelope with sufficient postage for mailing the material. Material lodged  
19 electronically must clearly specify the electronic address to which ~~the materials~~  
20 ~~may be returned~~ a notice of deletion may be sent. After determination of the matter,  
21 the clerk may mail or send the material if in paper form back to the party lodging it.  
22 If the lodged material is in electronic form, the clerk may permanently delete it.  
23 The clerk must send notice of the deletion to the party who lodged the material.  
24

25 **Rule 3.1306. Evidence at hearing**

26  
27 (a)–(b) \* \* \*

28  
29 (c) **Judicial notice**

30  
31 A party requesting judicial notice of material under Evidence Code sections 452 or  
32 453 must provide the court and each party with a copy of the material. If the  
33 material is part of a file in the court in which the matter is being heard, the party  
34 must:

35  
36 (1) Specify in writing the part of the court file sought to be judicially noticed;  
37 and

38  
39 (2) Make arrangements with the clerk to have the file in the courtroom or  
40 electronically accessible to the court at the time of the hearing.  
41

1 **Rule 3.1362. Motion to be relieved as counsel**

2  
3 **(a)–(c) \* \* \***

4  
5 **(d) Service**

6  
7 The notice of motion and motion, the declaration, and the proposed order must be  
8 served on the client and on all other parties who have appeared in the case. The  
9 notice may be by personal service, electronic service, or mail.

10  
11 (1) If the notice is served on the client by mail under Code of Civil Procedure  
12 section 1013, it must be accompanied by a declaration stating facts showing  
13 that either:

14  
15 (1A) The service address is the current residence or business address of the  
16 client; or

17  
18 (2B) The service address is the last known residence or business address of  
19 the client and the attorney has been unable to locate a more current  
20 address after making reasonable efforts to do so within 30 days before  
21 the filing of the motion to be relieved.

22  
23 (2) If the notice is served on the client by electronic service under Code of Civil  
24 Procedure section 1010.6 and rule 2.251, it must be accompanied by a  
25 declaration stating that the electronic service address is the client’s current  
26 electronic service address.

27  
28 As used in this rule, “current” means that the address was confirmed within 30 days  
29 before the filing of the motion to be relieved. Merely demonstrating that the notice  
30 was sent to the client’s last known address and was not returned or no electronic  
31 delivery failure message was received is not, by itself, sufficient to demonstrate  
32 that the address is current. If the service is by mail, Code of Civil Procedure section  
33 1011(b) applies.

34  
35 **(e) \* \* \***

1 Title 5. Family and Juvenile Rules

2  
3 Rule 5.66. Proof of service

4  
5 (a) Requirements to file proof of service

6  
7 Parties must file with the court a completed form to prove that the other party  
8 received the petition or complaint or response to petition or complaint.

9  
10 (b) Methods of proof of service

11  
12 (1) The proof of service of summons may be on a form approved by the Judicial  
13 Council or a document or pleading containing the same information required  
14 in *Proof of Service of Summons* (form FL-115).

15  
16 (2) The proof of service of response to petition or complaint may be on a form  
17 approved by the Judicial Council or a document or pleading containing the  
18 same information required in *Proof of Service by Mail* (form FL-335)-~~or~~,  
19 *Proof of Personal Service* (form FL-330), or Proof of Electronic Service  
20 (form POS-050/EFS-050).

21  
22 Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention  
23 Act cases

24  
25 (a)-(b) \* \* \*

26  
27 (c) **Notice of Entry of Judgment**

28  
29 When an Agreement and Judgment of Parentage (form DV-180) is filed, the court  
30 must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

31  
32 Rule 5.390. Bifurcation of issues

33  
34 (a)-(d) \* \* \*

35  
36 (e) **Notice by clerk**

37  
38 Within 10 days after the order deciding the bifurcated issue and any statement of  
39 decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the  
40 parties and file a certificate of mailing or a certificate of electronic service.

1 **Rule 5.392. Interlocutory appeals**

2  
3 (a) \* \* \*

4  
5 (b) **Certificate of probable cause for appeal**

6  
7 (1) \* \* \*

8  
9 (2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order  
10 deciding the bifurcated issue, a party may notice a motion asking the court to  
11 certify that there is probable cause for immediate appellate review of the  
12 order. The motion must be heard within 30 days after the order deciding the  
13 bifurcated issue is ~~mailed~~ served.

14  
15 (3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to  
16 the parties. If the motion is not determined within 40 days after ~~mailing of~~  
17 serving the order on the bifurcated issue, it is deemed granted on the grounds  
18 stated in the motion.

19  
20 (c) \* \* \*

21  
22 (d) **Motion to appeal**

23  
24 (1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~  
25 court serves the notice of the order granting it, serve and file in the Court of  
26 Appeal a motion to appeal the decision on the bifurcated issue. On ex parte  
27 application served and filed within 15 days, the Court of Appeal or the trial  
28 court may extend the time for filing the motion to appeal by not more than an  
29 additional 20 days.

30  
31 (2)–(6) \* \* \*

32  
33 (e) \* \* \*

34  
35 (f) **Proceedings if motion to appeal is granted**

36  
37 (1) \* \* \*

38  
39 (2) The partial record filed with the motion will be considered the record for the  
40 appeal unless, within 10 days from the date notice of the grant of the motion  
41 is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of  
42 the record that are needed for the full consideration of the appeal.

- 1 (3)–(4) \* \* \*
- 2
- 3 **(g)–(h)** \* \* \*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**           **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** 4/14/16

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (amend Cal. Rules of court, rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP 009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP 005, APP-006, APP-007, APP-008, APP-009, APP 009 INFO, APP-010, APP-011, APP 012, APP-101-INFO, APP-102, APP 103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP 150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee and Information Technology Advisory Committee

*Staff contact (name, phone and e-mail):* Katherine Sher, [katherine.sher@jud.ca.gov](mailto:katherine.sher@jud.ca.gov), 415-865-8031

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/10/15

Project description from annual agenda: Item 9 on AAC annual agenda - Modernize Appellate Court Rules for E-Filing and E-Business: a. Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business. b. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service)

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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### Title

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project)

### Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of court, rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275

### Proposed by

Information Technology Advisory Committee  
Hon. Terence L. Bruiniers, Chair  
Appellate Advisory Committee  
Hon. Raymond J. Ikola, Chair

### Action Requested

Review and submit comments by June 14, 2016

### Proposed Effective Date

January 1, 2017

### Contact

Katherine Sher, 415-865-8031  
katherine.sher@jud.ca.gov

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### Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) and Appellate Advisory Committee (AAC) propose changes to appellate rules and forms to facilitate modern e-business practices, e-filing, and e-service.

### Background

Recognizing that courts are swiftly proceeding to a paperless world, ITAC is undertaking the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business

*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.*

practices. Last year, the AAC assisted in Phase 1 of the project by identifying technical changes to the appellate rules needed to eliminate rule language inconsistent with current e-filing, e-service, and other e-business practices of the appellate courts. This year, ITAC and the AAC propose more substantive changes to the rules to facilitate and encourage use of modern e-business practices by the appellate courts, as well as further necessary technical changes to rules and forms.

## The Proposal

The proposal would make a number of changes affecting the appellate rules and forms. These changes are needed to make the rules and forms consistent with modern e-filing and e-service practices in the appellate courts. In particular, the proposal would:

- Add language to rule 8.104 providing that an order signed electronically has the same effect as an order signed on paper. This change is consistent with existing law under Government Code section 68150(g), which provides that an order signed using a computer holds the same force and effect as an order signed on paper. Some appellate courts have interpreted “signed order” under rule 8.104(c)(2) to require an order signed on paper. The change is intended to clarify that a signed paper order is not required.
- Add language in rule 8.144, subdivision (a), setting the format standard for computer-readable copies of reporters’ transcripts as any text-searchable format approved by the reviewing court. Corresponding changes are made throughout the rules to change references to the existing format standard, set by Code of Civil Procedure section 271, to instead refer to the new provision. This change is needed to replace the outdated format standard set under Code of Civil Procedure section 271(b) for computer-readable copies of reporters’ transcripts, which currently requires that they be on disks in standard ASCII code. Section 271(b) expressly permits the Judicial Council to adopt a format standard to be used in lieu of the statutory standard. The new standard proposed to be set in rule 8.144 sets a baseline that the format must allow for text-searching capability and allow original document formatting to be maintained. However, it gives reviewing courts flexibility as to what specific formats are permitted, to allow for changes as new document-formatting programs are developed.
- Add language to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007 stating that “[u]nder rule 8.72(a), the superior court clerk may send the record to the reviewing court in electronic form where permitted by the reviewing court and not otherwise prohibited.” Rule 8.72(a) allows electronic filing of documents by trial courts, including, under the definition of *document* in rule 8.70, a clerk’s or reporter’s transcript or other document transmitted from the trial court to the reviewing court.<sup>1</sup> As the appellate courts implement e-filing, the use of

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<sup>1</sup> Under the revision of the appellate e-filing rules proposed in “Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices,” SPR16-\_\_\_, rule 8.72(a) would no longer exist in its current form. However,

electronically filed records will become more common. The rules should be clear that this is permitted where the reviewing court allows it and there is no other rule or statute applicable in the particular case that would disallow use of an electronic record.

- Replace the word “mail” with “send” and “mailed” with “sent” in rules 8.450 and 8.454, and add e-mail to the list of ways the superior court clerk can send out notice as required. Rules 8.450 and 8.454 set out the procedures for filing and sending a notice of intent to file a writ petition in proceedings under specified Welfare and Institutions Code provisions. The proposed changes will allow for the possibility of e-mailing of notice where otherwise permitted.
- In rules 8.452 and 8.456, allow notice from the clerk of the reviewing court to the clerk of the respondent court in specified urgent situations to be by telephone or e-mail, where only telephonic notice is allowed under the existing rule. This change is intended to aid the courts where e-mail notice may be more convenient and more effective both for the court sending notice and for the court receiving notice.
- In rule 10.1028, allow the clerk of a Court of Appeal to keep a true and correct electronic copy of the reporter’s transcript in a criminal case in which the court affirms a judgment of conviction. The existing rule requires the original of the reporter’s transcript to be kept for a period of 20 years. Because the original of the reporter’s transcript must be on paper, as required by Code of Civil Procedure section 271, the change is needed to lessen the burden on the Courts of Appeal of having to provide for the long-term storage of numerous bulky paper transcripts.
- Make changes to forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-010, APP-011, APP-012, APP-102, APP-103, APP-104, APP-106, APP-107, APP-110, APP-151, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, and JV-822 to remove the words “optional” or “if available” where the forms ask for an e-mail address or fax number.
- Remove the integrated proof of service from forms APP-002, APP-005, and APP-007. This change is proposed to encourage litigants filing and serving these forms to use either the existing proof of service form, APP-009, or the proposed new form for proof of electronic service, APP-009E.
- Add to form APP-004, *Civil Case Information Statement*, an integrated proof of service that would allow proof of service by mail, personal delivery, or electronic service.

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revised rule 8.71(c) would state that trial courts are permitted to file documents electronically. If both this proposal and the other are adopted, references to rule 8.72(a) will be changed to refer to rule 8.71(c).

- Add to form APP-009 a note that it should not be used for proof of electronic service and that new form APP-009E should be used instead.
- Add information to form APP-009-INFO, *Information Sheet for Proof of Service (Court of Appeal)*, regarding electronic service and the new form APP-009E, *Proof of Electronic Service (Court of Appeal)*.
- Create new form APP-009E, *Proof of Electronic Service (Court of Appeal)*, and add references to this new form throughout the forms whenever the existing APP-009, *Proof of Service (Court of Appeal)*, is referenced.
- Change information on proof of service in form APP-101-INFO, *Information on Appeal Procedures for Limited Civil Cases*, to reflect the possibility of electronic service and to provide information on APP-109E, *Proof of Electronic Service (Appellate Division)*, the proposed new form for proof of electronic service.
- Add language to form APP-109 noting that proposed new form APP-109E should be used for proof of electronic service.
- Add information to form APP-109-INFO, “*What Is Proof of Service?*” regarding electronic service and the new form APP-109E, *Proof of Electronic Service (Appellate Division)*.
- Create new form APP-109E, *Proof of Electronic Service*.
- Change information on proof of service in form APP-150-INFO, *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases*, to reflect the possibility of electronic service.
- Add space for an attorney e-mail address on form CR-120, *Notice of Appeal—Felony*.
- Add space for a petitioner’s e-mail address on form JV-825, *Petition for Extraordinary Writ (Juvenile Dependency)*.
- Add language to form MC-275, *Petition for Writ of Habeas Corpus*, to reflect that different requirements as to the number of copies to be filed apply if the Petition is filed electronically.

### **Alternatives Considered**

With regard to new language in rule 8.144, setting a format standard for computer-readable copies of reporters’ transcripts, the committees considered whether the transcripts should be required to be in text-searchable PDF format. Because new programs are coming into use that

allow similar, and even enhanced, text-searching functions, the committees determined that a more open-ended standard was appropriate.

With regard to the new language added in multiple advisory committee comments stating that the record can be sent from the trial court to the reviewing court in electronic form, the committees considered whether substantive changes are needed in those rules addressing preparation of the record on appeal to put in place express protections for indigent, incarcerated, or other litigants who may be unable to access a record in electronic form, such that those litigants would be able to receive the record in paper form. Because the proposed changes are nonsubstantive and simply restate what is already permitted under the existing language of the rules, the committees decided that the proposed change should be made to encourage the use of records in electronic form.

With regard to the changes allowing use of e-mail for sending various notices in appeals of certain kinds of juvenile cases, the committees considered whether, in these cases, nonelectronic means of sending notices should continue to be required, although e-mail notice, where permitted as to the person receiving the notice, is now a possibility in other types of appeals. The committees consulted with the Family and Juvenile Law Advisory Committee, which determined that the change would be beneficial in those cases where e-mail could be used, without prejudicing those persons and parties who are unable to receive e-mail notices.

With regard to the change to rule 10.1028, the committees considered whether legislative action should be pursued so that the original of a reporter's transcript would no longer be required to be in paper form, addressing the storage problem faced by the Courts of Appeal. Because legislative change is uncertain, the committees determined that the change in the rule should be made.

With regard to removing the language from forms stating that e-mail addresses or fax numbers are "optional" or only to be provided "if available," the committees considered several options. First, leaving those forms stating that these fields are "optional" was determined to be undesirable because the courts want to have the e-mail addresses of parties and counsel whenever possible. Second, the committees considered whether the spaces provided for e-mail and fax should state that they are to be provided "if available." The committees determined that this language is unnecessary; parties know to leave the spaces blank if they do not have fax or e-mail. Third, the committees considered whether to leave these changes until other changes are proposed to the forms. However, the committees determined that it was more efficient to address the issue on all forms through this proposal.

With regard to creation of new electronic proof of service forms, the committees considered whether to add electronic proof of service to the existing proof of service forms. However, using the trial court *Proof of Electronic Service* (form POS-050/EFS-050), as a model, the committees determined that creation of separate forms and information sheets would make it easier for litigants to understand the different requirements that apply when service is performed electronically. The committees also considered whether separate information sheets should be created for the new proof of electronic service forms but determined that the risk of confusion

would decrease if litigants were able to get information on all means of service in one information sheet. The committees further considered whether to leave in place the integrated proofs of service on forms APP-002, APP-005 and APP-007, adding language to those forms to allow for electronic service. However, the committees determined that for purposes of changes that may be needed to proof of service forms in the future, removing the integrated forms and referring litigants to the stand-alone proof of service forms was advantageous.

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

ITAC and the AAC do not anticipate that the changes to the rules will incur new costs or require implementation on the part of the courts. Some of the changes should result in cost efficiencies as more documents are transmitted and stored in electronic format. The changes to the forms will require that the amended forms be posted online and made available in print to litigants; any increased cost resulting from the changes should be minimal.

### **Request for Specific Comments**

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

- Whether the proposal appropriately addresses the stated purpose;
- Specific comments on newly created subdivision 8.144(a)(4);
- Specific comments on the change to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007; and
- Specific comments on creation of separate proof of service forms for proof of electronic service.

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

- Would the proposal provide cost savings?
- What would the implementation requirements be for courts?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Proposed Cal. Rules of Court, rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028, at pages 7–21
2. Proposed forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009E, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109E, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275 at pages 22–175

Rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 8.104. Time to appeal**

2  
3 **(a)–(b) \* \* \***

4  
5 **(c) What constitutes entry**

6  
7 For purposes of this rule:

8  
9 (1) The entry date of a judgment is the date the judgment is filed under Code of  
10 Civil Procedure section 668.5, or the date it is entered in the judgment book.

11  
12 (2) The entry date of an appealable order that is entered in the minutes is the date  
13 it is entered in the permanent minutes. But if the minute order directs that a  
14 written order be prepared, the entry date is the date the signed order is filed; a  
15 written order prepared under rule 3.1312 or similar local rule is not such an  
16 order prepared by direction of a minute order.

17  
18 (3) The entry date of an appealable order that is not entered in the minutes is the  
19 date the signed order is filed.

20  
21 (4) The entry date of a decree of distribution in a probate proceeding is the date it  
22 is entered at length in the judgment book or other permanent court record.

23  
24 (5) An order signed electronically has the same effect as an order signed on  
25 paper.

26  
27 **(d)–(e) \* \* \***

28  
29  
30 **Rule 8.130. Reporter’s transcript**

31  
32 **(a)–(e) \* \* \***

33  
34 **(f) Filing the transcript; copies; payment**

35  
36 (1)–(3) \* \* \*

37  
38 (4) On request, and unless the superior court orders otherwise, the reporter must  
39 provide the Court of Appeal or any party with a copy of the reporter’s  
40 transcript in computer-readable format. Each computer-readable copy must  
41 comply with the ~~format, labeling, content, and numbering requirements of~~  
42 Code of Civil Procedure section 271(b) requirements of rule 8.144(a)(4).  
43

1 (g)–(h) \* \* \*

2  
3  
4 **Rule 8.144. Form of the record**

5  
6 (a) **Paper and format**

7  
8 (1)–(3) \* \* \*

9  
10 (4) A computer-readable copy of a reporter’s transcript must be in a text-  
11 searchable format approved by the reviewing court while maintaining  
12 original document formatting.

13  
14 ~~(4)~~(5) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47  
15 relating to sealed and confidential records.

16  
17 (b)–(f) \* \* \*

18  
19 **Advisory Committee Comment**

20  
21 **Subdivisions (a) and (b).** Subdivision (a)(4) is adopted under Code of Civil Procedure section  
22 271(b), which allows the Judicial Council to adopt format requirements for computer-readable  
23 copies of a reporter’s transcript. Subdivisions (a)(4)–(5) and (b) refer to special requirements  
24 concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3)  
25 establish special requirements regarding references to sealed and confidential records in the  
26 alphabetical and chronological indexes to clerk’s and reporter’s transcripts.

27  
28  
29 **Rule 8.150. Filing the record**

30  
31 (a) **Superior court clerk’s duties**

32  
33 When the record is complete, the superior court clerk must promptly send the  
34 original to the reviewing court and the copy to the appellant.

35  
36 (b) \* \* \*

37  
38 **Advisory Committee Comment**

39  
40 **Subdivision (a).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
41 court in electronic form where permitted by the reviewing court and not otherwise prohibited.

1 **Rule 8.336. Preparing, certifying, and sending the record**

2  
3 (a)–(c) \* \* \*

4  
5 **(d) Reporter’s transcript**

6  
7 (1) \* \* \*

8  
9 (2) The reporter must prepare an original and the same number of copies of the  
10 reporter’s transcript as (c) requires of the clerk’s transcript, and must certify  
11 each as correct. On request, and unless the trial court orders otherwise, the  
12 reporter must provide the Court of Appeal and any party with a copy of the  
13 reporter’s transcript in computer-readable format. Each computer-readable  
14 copy must comply with the ~~format, labeling, content, and numbering~~  
15 requirements of Code of Civil Procedure section 271(b) requirements of rule  
16 8.144(a)(4).

17  
18 (3)–(5) \* \* \*

19  
20 *(Subd (d) amended effective January 1, 2016; previously amended effective January 1,*  
21 *2007, and January 1, 2014.)*

22  
23 (e)–(h) \* \* \*

24  
25 **Advisory Committee Comment**

26  
27 **Subdivision (a).** Subdivision (a) implements Code of Civil Procedure section 269(b).

28  
29 **Subdivision (d).** This subdivision is intended to implement Code of Civil Procedure section 271,  
30 which allows any court, party, or other person entitled to a reporter’s transcript to request that it  
31 be delivered in computer-readable format (except that an original transcript must be on paper) and  
32 requires the reporter to provide the transcript in that format upon request if the proceedings were  
33 produced using computer-aided transcription equipment. This subdivision establishes procedures  
34 relating to such requests and procedures for court reporters to apply to the superior court for relief  
35 from this requirement if the proceedings were not produced using computer-aided transcription  
36 equipment. Government Code section 69954 establishes the fees for reporter’s transcripts in  
37 computer-readable format.

38  
39 **Subdivision (f).** Examples of confidential records include Penal Code section 1203.03 diagnostic  
40 reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118  
41 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential  
42 informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court*  
43 (1982) 31 Cal.3d 424, 430).

44  
45 **Subdivision (g).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
46 court in electronic form where permitted by the reviewing court and not otherwise prohibited.

1 **Rule 8.409. Preparing and sending the record**

2  
3 (a)–(b) \* \* \*

4  
5 (c) **Preparing and certifying the transcripts**

6  
7 Within 20 days after the notice of appeal is filed:

8  
9 (1) The clerk must prepare and certify as correct an original of the clerk’s  
10 transcript and one copy each for the appellant, the respondent, the child’s  
11 Indian tribe if the tribe has intervened, and the child if the child is represented  
12 by counsel on appeal or if a recommendation has been made to the Court of  
13 Appeal for appointment of counsel for the child under rule 8.403(b)(2) and  
14 that recommendation is either pending with or has been approved by the  
15 Court of Appeal but counsel has not yet been appointed; and

16  
17 (2) The reporter must prepare, certify as correct, and deliver to the clerk an  
18 original of the reporter’s transcript and the same number of copies as (1)  
19 requires of the clerk’s transcript. On request, and unless the trial court orders  
20 otherwise, the reporter must provide the Court of Appeal and any party with a  
21 copy of the reporter’s transcript in computer-readable format. Each  
22 computer-readable copy must comply with the ~~format, labeling, content, and~~  
23 ~~numbering requirements of Code of Civil Procedure section~~  
24 ~~271(b)~~ requirements of rule 8.144(a)(4).

25  
26 (d)–(e) \* \* \*

27  
28 **Advisory Committee Comment**

29  
30 **Subdivisions (a)–(b) \* \* \***

31  
32 **Subdivision (c)(2).** This subdivision is intended to implement Code of Civil Procedure section  
33 271, which allows any court, party, or other person entitled to a reporter’s transcript to request  
34 that it be delivered in computer-readable format (except that an original transcript must be on  
35 paper) and requires the reporter to provide the transcript in that format upon request if the  
36 proceedings were produced using computer-aided transcription equipment. This subdivision  
37 establishes procedures relating to such requests and procedures for court reporters to apply to the  
38 superior court for relief from this requirement if the proceedings were not produced using  
39 computer-aided transcription equipment. Government Code section 69954 establishes the fees for  
40 reporters’ transcripts in computer-readable format.

41  
42 **Subdivision (e).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
43 court in electronic form where permitted by the reviewing court and not otherwise  
44 prohibited. Subsection (1)(B) clarifies that when a child’s Indian tribe has intervened in the  
45 proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that  
46 require notices to be sent to a tribe by registered or certified mail return receipt requested and  
47 generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and  
48 Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

1  
2  
3 **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in**  
4 **Orange, Imperial, and San Diego Counties and in other counties by local rule**  
5

6 (a)–(b) \* \* \*

7  
8 **(c) Preparing, certifying, and sending the record**  
9

10 (1) Within 20 days after the notice of appeal is filed:  
11

12 (A) The clerk must prepare and certify as correct an original of the clerk’s  
13 transcript and one copy each for the appellant, the respondent, the  
14 district appellate project, the child’s Indian tribe if the tribe has  
15 intervened, and the child if the child is represented by counsel on  
16 appeal or if a recommendation has been made to the Court of Appeal  
17 for appointment of counsel for the child under rule 8.403(b)(2) and that  
18 recommendation is either pending with or has been approved by the  
19 Court of Appeal but counsel has not yet been appointed; and  
20

21 (B) The reporter must prepare, certify as correct, and deliver to the clerk an  
22 original of the reporter’s transcript and the same number of copies as  
23 (A) requires of the clerk’s transcript. On request, and unless the trial  
24 court orders otherwise, the reporter must provide the Court of Appeal  
25 and any party with a copy of the reporter’s transcript in computer-  
26 readable format. Each computer-readable copy must comply with the  
27 ~~format, labeling, content, and numbering requirements of Code of Civil~~  
28 ~~Procedure section 271(b)~~ requirements of rule 8.144(a)(4).  
29

30 (2) When the clerk’s and reporter’s transcripts are certified as correct, the clerk  
31 must immediately send:  
32

33 (A) The original transcripts to the reviewing court by the most expeditious  
34 method, noting the sending date on each original; and  
35

36 (B) One copy of each transcript to the district appellate project and to the  
37 appellate counsel for the following, if they have appellate counsel, by  
38 any method as fast as United States Postal Service express mail:  
39

40 (i) The appellant;

41  
42 (ii) The respondent;

43  
44 (iii) The child’s Indian tribe if the tribe has intervened; and  
45

46 (iv) The child.  
47

1 (3) If appellate counsel has not yet been retained or appointed for the appellant or  
2 the respondent or if a recommendation has been made to the Court of Appeal  
3 for appointment of counsel for the child under rule 8.403(b)(2) and that  
4 recommendation is either pending with or has been approved by the Court of  
5 Appeal but counsel has not yet been appointed, when the transcripts are  
6 certified as correct, the clerk must send that counsel's copies of the  
7 transcripts to the district appellate project. If a tribe that has intervened is not  
8 represented by counsel when the transcripts are certified as correct, the clerk  
9 must send that counsel's copy of the transcripts to the tribe.

10  
11 (d)–(h) \* \* \*

12  
13  
14 **Advisory Committee Comment**

15  
16 **Subdivision (c).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
17 court in electronic form where permitted by the reviewing court and not otherwise prohibited.

18  
19 **Subdivision (g).** Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g)  
20 to address a failure to timely file a brief in all termination of parental rights cases and in  
21 dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision,  
22 appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a  
23 late brief, but instead would have the standard 15-day grace period that is given in civil cases.  
24 The intent of this revision is to balance the need to determine the appeal within 250 days with the  
25 need to protect appellants' rights in this most serious of appeals.

26  
27 **Subdivision (h).** Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring  
28 counsel to file any request for oral argument within a time period other than 15 days after the  
29 appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine  
30 the appeal "within 250 days after the notice of appeal is filed." (Subdivision (e).)

31  
32  
33 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**  
34 **under Welfare and Institutions Code section 366.26**

35  
36 (a)–(f) \* \* \*

37  
38 (g) **Sending the notice of intent**

39  
40 (1) When the notice of intent is filed, the superior court clerk must  
41 immediately ~~mail~~ send a copy of the notice to:

42  
43 (A) The attorney of record for each party;

44  
45 (B) Each party, including the child if the child is 10 years of age or older;

- 1 (C) Any known sibling of the child who is the subject of the hearing if that  
 2 sibling either is the subject of a dependency proceeding or has been  
 3 adjudged to be a dependent child of the juvenile court as follows:  
 4  
 5 (i) If the sibling is under 10 years of age, on the sibling’s attorney;  
 6  
 7 (ii) If the sibling is 10 years of age or over, on the sibling and the  
 8 sibling’s attorney.  
 9  
 10 (D) The mother, the father, and any presumed and alleged parents;  
 11  
 12 (E) The child’s legal guardian, if any;  
 13  
 14 (F) Any person currently awarded by the juvenile court the status of the  
 15 child’s de facto parent;  
 16  
 17 (G) The probation officer or social worker;  
 18  
 19 (H) Any Court Appointed Special Advocate (CASA) volunteer;  
 20  
 21 (I) The grandparents of the child, if their address is known and if the  
 22 parents’ whereabouts are unknown; and  
 23  
 24 (J) If the court knows or has reason to know that an Indian child is  
 25 involved, the Indian custodian, if any, and tribe of the child or the  
 26 Bureau of Indian Affairs as required under Welfare and Institutions  
 27 Code section 224.2.  
 28  
 29 (2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the  
 30 notice of intent and a list of those to whom the notice of intent was sent to:  
 31  
 32 (A) The reviewing court; and  
 33  
 34 (B) The petitioner if the clerk ~~mailed~~ sent the notice of intent to the Indian  
 35 custodian, tribe of the child, or the Bureau of Indian Affairs.  
 36  
 37 (3) If the party was notified of the order setting the hearing only by mail, the  
 38 clerk must include the date that the notification was mailed.  
 39

40 **(h)–(j) \* \* \***

41  
 42 **Advisory Committee Comment**  
 43

44 **Subdivision (d).** The case law generally recognizes that the reviewing courts may grant  
 45 extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v.*  
 46 *Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716  
 47 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances

1 not under the petitioner’s control].) It may constitute exceptional good cause for an extension of  
2 the time to file a notice of intent if a premature notice of intent is returned to a party shortly  
3 before the issuance of an order setting a hearing under Welfare and Institutions Code section  
4 366.26.

5  
6 **Subdivision (e)(4).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
7 mailed by inmates or patients from custodial institutions.

8  
9 **Subdivision (f)(1).** A party who prematurely attempts to file a notice of intent to file a writ  
10 petition under Welfare and Institutions Code section 366.26 is not precluded from later filing  
11 such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code  
12 section 366.26.

13  
14 **Subdivision (i).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
15 court in electronic form where permitted by the reviewing court and not otherwise prohibited.

16  
17  
18 **Rule 8.452. Writ petition to review order setting hearing under Welfare and**  
19 **Institutions Code section 366.26**

20  
21 **(a)–(g) \* \* \***

22  
23 **(h) Decision**

- 24  
25 (1) Absent exceptional circumstances, the reviewing court must decide the  
26 petition on the merits by written opinion.  
27  
28 (2) The reviewing court clerk must promptly notify the parties of any decision  
29 and must promptly send a certified copy of any writ or order to the court  
30 named as respondent.  
31  
32 (3) If the writ or order stays or prohibits proceedings set to occur within 7 days  
33 or requires action within 7 days—or in any other urgent situation—the  
34 reviewing court clerk must make a reasonable effort to notify the clerk of the  
35 respondent court by telephone or e-mail. The clerk of the respondent court  
36 must then notify the judge or officer most directly concerned.  
37  
38 (4) The reviewing court clerk need not give telephonic or e-mail notice of the  
39 summary denial of a writ, unless a stay previously issued will be dissolved.

40  
41 **(i) \* \* \***  
42  
43

1 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**  
2 **section 366.28 to review order designating specific placement of a dependent**  
3 **child after termination of parental rights**  
4

5 (a)–(f) \* \* \*

6  
7 **(g) Sending the notice of intent**  
8

9 (1) When the notice of intent is filed, the superior court clerk must  
10 immediately ~~mail~~ send a copy of the notice to:

- 11 (A) The attorney of record for each party;  
12  
13 (B) Each party, including the child if the child is 10 years of age or older;  
14  
15 (C) Any known sibling of the child who is the subject of the hearing if that  
16 sibling either is the subject of a dependency proceeding or has been  
17 adjudged to be a dependent child of the juvenile court as follows:  
18  
19 (i) If the sibling is under 10 years of age, on the sibling's attorney;  
20  
21 (ii) If the sibling is 10 years of age or over, on the sibling and the  
22 sibling's attorney;  
23  
24 (D) Any prospective adoptive parent;  
25  
26 (E) The child's legal guardian if any;  
27  
28 (F) Any person currently awarded by the juvenile court the status of the  
29 child's de facto parent;  
30  
31 (G) The probation officer or social worker;  
32  
33 (H) The child's Court Appointed Special Advocate (CASA) volunteer, if  
34 any; and  
35  
36 (I) If the court knows or has reason to know that an Indian child is  
37 involved, the Indian custodian, if any, and tribe of the child or the  
38 Bureau of Indian Affairs as required under Welfare and Institutions  
39 Code section 224.2.  
40

41  
42 (2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the  
43 notice of intent and a list of those to whom the notice of intent was sent to:

- 44 (A) The reviewing court; and  
45  
46

1 (B) The petitioner if the clerk ~~mailed~~ sent a copy of the notice of intent to  
2 the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

3  
4 (3) If the party was notified of the postplacement order only by mail, the clerk  
5 must include the date that the notification was mailed.

6  
7 **(h)–(j) \* \* \***

8  
9 **Advisory Committee Comment**

10  
11 **Subdivision (f)(2).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents  
12 mailed by inmates or patients from custodial institutions.

13  
14 **Subdivision (i).** Under rule 8.72(a), the superior court clerk may send the record to the reviewing  
15 court in electronic form where permitted by the reviewing court and not otherwise prohibited.

16  
17  
18 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to**  
19 **review order designating or denying specific placement of a dependent child**  
20 **after termination of parental rights**

21  
22 **(a)–(g) \* \* \***

23  
24 **(h) Decision**

25  
26 (1) Absent exceptional circumstances, the reviewing court must review the  
27 petition and decide it on the merits by written opinion.

28  
29 (2) The reviewing court clerk must promptly notify the parties of any decision  
30 and must promptly send a certified copy of any writ or order to the court  
31 named as respondent.

32  
33 (3) If the writ or order stays or requires action within 7 days—or in any other  
34 urgent situation—the reviewing court clerk must make a reasonable effort to  
35 notify the clerk of the respondent court by telephone or e-mail. The clerk of  
36 the respondent court must then notify the judge or officer most directly  
37 concerned.

38  
39 (4) The reviewing court clerk need not give telephonic or e-mail notice of the  
40 summary denial of a writ, unless a stay previously issued and will be  
41 dissolved.

42  
43 (5) Rule 8.490 governs the filing, modification, finality of decisions, and  
44 remittitur in writ proceedings under this rule.

45  
46 **(i) \* \* \***

1  
2 **Rule 8.480. Appeal from order establishing conservatorship**

3  
4 (a)–(e) \* \* \*

5  
6 **Advisory Committee Comment**

7  
8 **Subdivision (a).** Under rule 8.72(a), the superior court clerk may send the record to the  
9 reviewing court in electronic form where permitted by the reviewing court and not otherwise  
10 prohibited.

11  
12  
13 **Rule 8.482. Appeal from judgment authorizing conservator to consent to**  
14 **sterilization of conservatee**

15  
16 (a)–(i) \* \* \*

17  
18 **Advisory Committee Comment**

19  
20 **Subdivision (a).** Under rule 8.72(a), the superior court clerk may send the record to the  
21 reviewing court in electronic form where permitted by the reviewing court and not otherwise  
22 prohibited.

23  
24  
25 **Rule 8.489. Notice to trial court**

26  
27 (a) \* \* \*

28  
29 **(b) Notice by telephone**

- 30  
31 (1) If the writ or order stays or prohibits proceedings set to occur within 7 days  
32 or requires action within 7 days—or in any other urgent situation—the  
33 reviewing court clerk must make a reasonable effort to notify the clerk of the  
34 respondent court by telephone or e-mail. The clerk of the respondent court  
35 must then notify the judge or officer most directly concerned.  
36  
37 (2) The clerk need not give telephonic or e-mail notice of the summary denial of  
38 a writ, whether or not a stay previously issued.  
39  
40

41 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

42  
43 (a)–(h) \* \* \*

44  
45 **(i) Computer-readable copies**

- 1 (1) When the record of the preliminary proceedings is certified as complete and  
2 accurate, the clerk must promptly notify the reporter to prepare five  
3 computer-readable copies of the transcript and two additional computer-  
4 readable copies for each codefendant against whom the death penalty is  
5 sought.  
6  
7 (2) Each computer-readable copy must comply with the ~~format, labeling,  
8 content, and numbering requirements of Code of Civil Procedure section  
9 271(b)~~ requirements of rule 8.144(a)(4) and any additional  
10 requirements prescribed by the Supreme Court, and must be further labeled to  
11 show the date it was made.  
12  
13 (3) A computer-readable copy of a sealed transcript must be placed on a separate  
14 disk and clearly labeled as confidential.  
15  
16 (4) The reporter is to be compensated for computer-readable copies as provided  
17 in Government Code section 69954(b).  
18  
19 (5) Within 20 days after the clerk notifies the reporter under (1), the reporter  
20 must deliver the computer-readable copies to the clerk.  
21

22 (j)-(l) \* \* \*

23  
24  
25 **Rule 8.619. Certifying the trial record for completeness**  
26

27 (a)-(d) \* \* \*

28  
29 (e) **Computer-readable copies**  
30

- 31 (1) When the record is certified as complete, the clerk must promptly notify the  
32 reporter to prepare five computer-readable copies of the transcript and two  
33 additional computer-readable copies for each codefendant sentenced to death.  
34  
35 (2) Each computer-readable copy must ~~comply with the format, labeling,  
36 content, and numbering requirements of Code of Civil Procedure section  
37 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional  
38 requirements prescribed by the Supreme Court, and must be further labeled to  
39 show the date it was made.  
40  
41 (3) A computer-readable copy of a sealed transcript must be placed on a separate  
42 disk and clearly labeled as confidential.  
43  
44 (4) The reporter is to be compensated for computer-readable copies as provided  
45 in Government Code section 69954(b).  
46

1 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter  
2 must deliver the computer-readable copies to the clerk.  
3

4 **(f)–(h) \* \* \***  
5  
6

7 **Rule 8.625. Certifying the record in pre-1997 trials**  
8

9 **(a) \* \* \***  
10

11 **(b) Sending the transcripts to counsel for review**  
12

13 (1) When the clerk and the reporter certify that their respective transcripts are  
14 correct, the clerk must promptly send a copy of each transcript to each  
15 defendant’s trial counsel, to the Attorney General, to the district attorney, to  
16 the California Appellate Project in San Francisco, and to the Habeas Corpus  
17 Resource Center, noting the sending date on the originals.  
18

19 (2) The copies of the reporter’s transcript sent to the California Appellate Project  
20 and the Habeas Corpus Resource Center must be computer-readable copies  
21 complying with ~~the format, labeling, content, and numbering requirements of~~  
22 Code of Civil Procedure section 271(b) the requirements of rule  
23 8.144(a)(4) and any additional requirements prescribed by the Supreme  
24 Court, and must be further labeled to show the date it was made.  
25

26 (3) When the clerk is notified of the appointment or retention of each defendant’s  
27 appellate counsel, the clerk must promptly send that counsel copies of the  
28 clerk’s transcript and the reporter’s transcript, noting the sending date on the  
29 originals. The clerk must notify the Supreme Court, the Attorney General,  
30 and each defendant’s appellate counsel in writing of the date the transcripts  
31 were sent to appellate counsel.  
32

33 **(c)–(e) \* \* \***  
34  
35

36 **Rule 8.834. Reporter’s transcript**  
37

38 **(a)–(c) \* \* \***  
39

40 **(d) Filing the reporter’s transcript; copies; payment**  
41

42 **(1)–(3) \* \* \***  
43

44 (4) On request, and unless the trial court orders otherwise, the reporter must  
45 provide the reviewing court or any party with a copy of the reporter’s

1 transcript in computer-readable format. Each computer-readable copy  
2 must ~~comply with the format, labeling, content, and numbering requirements~~  
3 ~~of Code of Civil Procedure section 271(b)~~ comply with the requirements of  
4 rule 8.144(a)(4).  
5

6 (e)–(f) \* \* \*

7  
8  
9 **Rule 8.866. Preparation of reporter’s transcript**

10  
11 (a)–(c) \* \* \*

12  
13 **(d) When preparation must be completed**

14  
15 (1) The reporter must deliver the original and all copies to the trial court clerk as  
16 soon as they are certified but no later than 20 days after the reporter is required  
17 to begin preparing the transcript under (a). Only the presiding judge of the  
18 appellate division or his or her designee may extend the time to prepare the  
19 reporter’s transcript (see rule 8.810).  
20

21 (2) On request, and unless the trial court orders otherwise, the reporter must  
22 provide the reviewing court or any party with a copy of the reporter’s transcript  
23 in computer-readable format. Each computer-readable copy must comply with  
24 the requirements of rule 8.144(a)(4).  
25

26 (e)–(f) \* \* \*

27  
28  
29 **Rule 8.919. Preparation of reporter’s transcript**

30  
31 (a)–(c) \* \* \*

32  
33 **(d) When preparation must be completed**

34  
35 (1) The reporter must deliver the original and all copies to the trial court clerk as  
36 soon as they are certified but no later than 20 days after the reporter is required  
37 to begin preparing the transcript under (a). Only the presiding judge of the  
38 appellate division or his or her designee may extend the time to prepare the  
39 reporter’s transcript (see rule 8.810).  
40

41 (2) On request, and unless the trial court orders otherwise, the reporter must  
42 provide the reviewing court or any party with a copy of the reporter’s transcript  
43 in computer-readable format. Each computer-readable copy must comply with  
44 the requirements of rule 8.144(a)(4).  
45  
46

1 **Rule 8.1007. Transmitting record to Court of Appeal**

2  
3 (a)–(b) \* \* \*

4  
5 **Advisory Committee Comment**

6  
7 Under rule 8.72(a), the superior court clerk may send the record to the reviewing court in  
8 electronic form where permitted by the reviewing court and not otherwise prohibited.

9  
10  
11 **Rule 10.1028. Preservation and destruction of Court of Appeal records**

12 (a)–(c) \* \* \*

13 **(d) Time to keep other records**

- 14 (1) Except as provided in (2), the clerk may destroy all other records in a case 10  
15 years after the decision becomes final, as ordered by the administrative  
16 presiding justice or, in a court with only one division, by the presiding  
17 justice.
- 18  
19 (2) In a criminal case in which the court affirms a judgment of conviction, the  
20 clerk must keep the original reporter's transcript or a true and correct  
21 electronic copy thereof for 20 years after the decision becomes final.

22  
23 **Advisory Committee Comment**

24  
25 **Subdivision (d).** Subdivision (d) permits the Court of Appeal to keep an electronic copy of the  
26 reporter's transcript in lieu of keeping the original. Although subdivision (a) allows the Court of  
27 Appeal to maintain its records in any format that satisfies the otherwise applicable standards for  
28 maintenance of court records, including electronic formats, the original of a reporter's transcript  
29 is required to be on paper under Code of Civil Procedure section 271(a). Subdivision (d) therefore  
30 specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by  
31 the court.

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>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
<input type="checkbox"/> <b>NOTICE OF APPEAL</b> <input type="checkbox"/> <b>CROSS-APPEAL</b> <b>(UNLIMITED CIVIL CASE)</b>	CASE NUMBER:

**Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.**

1. NOTICE IS HEREBY GIVEN that (name):  
 appeals from the following judgment or order in this case, which was entered on (date):
- Judgment after jury trial
  - Judgment after court trial
  - Default judgment
  - Judgment after an order granting a summary judgment motion
  - Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
  - Judgment of dismissal after an order sustaining a demurrer
  - An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
  - An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
  - Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
  - b. Date superior court clerk mailed notice of original appeal:
  - c. Court of Appeal case number (if known):

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

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



CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

2. b.  WITH the following record of the oral proceedings in the superior court:
- (1)  A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
    - (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
  - (2)  An agreed statement. *(Check and complete either (a) or (b) below.)*
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

<b>Title of Administrative Proceeding</b>	<b>Date or Dates</b>
---	----------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

*(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)*

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

<b>Document Title and Description</b>	<b>Date of Filing</b>
---------------------------------------	-----------------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

*(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)*

a. I request that the reporters provide *(check one)*:

- (1)  My copy of the reporter's transcript in paper format.
- (2)  My copy of the reporter's transcript in computer-readable format.
- (3)  My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

*(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

**5. b. Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)						<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b  include  do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	COURT OF APPEAL CASE NUMBER (if known):
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>
APPELLANT: RESPONDENT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	SUPERIOR COURT CASE NUMBER:
JUDGES (all who participated in case):	
<b>CIVIL CASE INFORMATION STATEMENT</b>	
<b>NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).</b>	

**PART I – APPEAL INFORMATION**

**A. APPEALABILITY**

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes  No (If no, please explain why the judgment is appealable):

**B. TIMELINESS OF APPEAL (Provide all applicable dates.)**

1. Date of entry of judgment or order appealed from:
2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?

- Yes  No (If yes, please specify the type of motion):

Date notice of intention to move for new trial (if any) filed:

Date motion filed:

Date motion denied:

Date denial served:

4. Date notice of  appeal or  cross-appeal filed:

**C. BANKRUPTCY OR OTHER STAY**

Is there a related bankruptcy case or a court-ordered stay that affects this appeal?  Yes  No

(If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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D. APPELLATE CASE HISTORY (*Provide additional information, if necessary, on attachment I.D.*) Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?

Yes  No (If yes, insert name of appellate court):

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?

Yes  No (*If yes, please indicate the rule or statute that applies*)

- |  |  |
|--|--|
| <input type="checkbox"/> Rule 8.29 (e.g., constitutional challenge; state or county party)   | <input type="checkbox"/> Code Civ. Proc., § 1355 (Escheat)   |
| <input type="checkbox"/> Bus. & Prof. Code, §16750.2 (Antitrust)   | <input type="checkbox"/> Gov. Code, § 946.6(d) (Actions against public entities)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act)   | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings)                                   |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising)  | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act)  |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)                     |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)  | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
|  | <input type="checkbox"/> Pub. Resources Code, § 21167.7 (CEQA)   |
|  | <input type="checkbox"/> Other (specify statute):  |

**NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.**

**PART II – NATURE OF ACTION**

A. Nature of action (*check all that apply*):

1.  Conservatorship
2.  Contract
3.  Eminent domain
4.  Equitable action    a.  Declaratory relief    b.  Other (*describe*):
5.  Family law
6.  Guardianship
7.  Probate
8.  Real property rights    a.  Title of real property    b.  Other (*describe*):
9.  Tort
  - a.  Medical malpractice
  - b.  Product liability
  - c.  Other personal injury
  - d.  Personal property
  - e.  Other tort (*describe*):
10.  Trust proceedings
11.  Writ proceedings in superior court
  - a.  Mandate (Code Civ. Proc., § 1085)
  - b.  Administrative mandate (Code Civ. Proc., § 1094.5)
  - c.  Prohibition (Code Civ. Proc., § 1102)
  - d.  Other (*describe*):
12.  Other action (*describe*):

B.  This appeal is entitled to calendar preference/priority on appeal (*cite authority*):



APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:
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NOTICE TO PARTIES: A copy of this must be served on the other party or parties to this appeal. If served by mail or personal delivery, A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

### PROOF OF SERVICE

Mail     Personal Service     Electronic Service

1. At the time of service I was at least 18 years of age.
2. My residence or business address is (*specify*):
  
3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows (*complete a, b, or c*):
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
    - (1) I enclosed a copy in an envelope **and**
      - (a)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
  
      - (c) Date of mailing:
      - (d) Place of mailing (*city and state*):
  - b.  **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
  
    - (3) Date delivered:
    - (4) Time delivered:
  - c.  **Electronic service.** My electronic service address is (*specify*):
 

I electronically served a copy as follows:

    - (1) Name of person served:
    - (2) Electronic service address of person served:
    - (3) On (*date*):

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 DECLARANT)





APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The reasons that I need an extension to file this brief are stated
- below
- on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

*(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):*

9. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).
10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



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

Order on Application is  below  on a separate document

**ORDER**

EXTENSION OF TIME IS:

Granted to (date): \_\_\_\_\_

Denied

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



\_\_\_\_\_  
 (SIGNATURE OF PRESIDING JUSTICE)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY:      STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR ( <i>name</i> ):			
APPELLANT:			
RESPONDENT:			
<b>REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)</b>			

The undersigned appellant hereby requests that the appeal filed on (*date*): \_\_\_\_\_ in the above entitled action be dismissed.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

**NOTE:** File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
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):		SUPERIOR COURT CASE NUMBER:
APPELLANT/ PETITIONER: RESPONDENT/ REAL PARTY IN INTEREST:		
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>		
(Check one): <input type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>		

1. This form is being submitted on behalf of the following party (name ):
2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

<b>PROOF OF SERVICE (Court of Appeal)</b> <input type="checkbox"/> Mail <input type="checkbox"/> Personal Service	
<b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.</b>	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
  
2. My  residence  business address is (*specify*):
  
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
  - a.  **Mail.** I mailed a copy of the document identified above as follows:
    - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
      - (a)  **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
      - (b)  **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
    - (2) Date mailed:
    - (3) The envelope was or envelopes were addressed as follows:
      - (a) Person served:
        - (i) Name:
        - (ii) Address:
  
      - (b) Person served:
        - (i) Name:
        - (ii) Address:
  
      - (c) Person served:
        - (i) Name:
        - (ii) Address:
  
- Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
  
- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

Case Name:	Court of Appeal Case Number:
	Superior Court Case Number:

3. b.  **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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 OF PERSON COMPLETING THIS FORM)



\_\_\_\_\_  
(SIGNATURE OF PERSON COMPLETING THIS FORM)

<b>PROOF OF ELECTRONIC SERVICE (Court of Appeal)</b>	
<b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form.</b>	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age.
  2. a. My  residence  business address is (*specify*):  
  
b. My electronic service address is (*specify*):
  3. I electronically served the following documents (*exact titles*):
  4. I electronically served the documents listed in 3. as follows:
    - a. Name of person served:  
On behalf of (*name or names of parties represented, if person served is an attorney*):
    - b. Electronic service address of person served:
    - c. On (*date*):
- The documents listed in 3. were served electronically on the persons and in the manner described in an attachment (*write "APP-009E, Item 4" at the top of the page*).

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 OF PERSON COMPLETING THIS FORM)

▶ \_\_\_\_\_  
(SIGNATURE OF PERSON COMPLETING THIS FORM)

## INFORMATION SHEET FOR PROOF OF SERVICE (COURT OF APPEAL)

### GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To “serve” a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by electronic transmission, transmitting a document to the electronic service address of a person, or by electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide this required proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

### INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

#### Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side:* Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side:* Leave this box blank for the court's use.

#### Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.

3. Fill in the name of the document that you are serving.
- a. If you are serving the document by mail, check box a. and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:
- (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.
  - (2) Provide the date the documents are being mailed.
  - (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."
  - (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

- b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:
- (1) The name of the person;
  - (2) The address at which you delivered the document;
  - (3) The date on which you delivered the document; and
  - (4) The time at which you delivered the document.

If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

#### **INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY**

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically, you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

#### **Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009E) as follows:**

1. *Third box, left side:* Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side:* Leave this box blank for the court's use.

#### **Complete items 1–4 as follows:**

1. You are stating that you are over the age of 18.
2. a. Check one of the boxes and provide your home or business address.
- b. Provide your electronic service address. This is the address at which you have agreed to accept electronic service.

*Continued on the reverse*

3. Fill in the names of the documents that you are serving.
4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item (4)(c) and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."
  - a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or name of the parties represented.
  - b. Provide the electronic service address of the person to whom you are sending the document.
  - c. Provide the date on which you transmitted the document.

After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled in form with the document you are serving to each person served.

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.

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>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

**1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has elected to use a clerk's transcript under rule 8.122.

- a.  **Additional documents.** (If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		

See additional pages.

- b.  **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			

See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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1. c.  Copy of clerk's transcript. I request a copy of the clerk's transcript. (*check (1) or (2).*)
- (1)  I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b)*):
- (a)  An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b)  An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use Request to Waive Court Fees (form FW-001) to prepare and file this application.*)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has elected to use a reporter's transcript under rule 8.130.

- a.  **Designation of additional proceedings.** (*If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.*)
- (1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior court be included in the reporter's transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.*)

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)						<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. a. (2) **Deposit for additional proceedings**

I have (*check a, b, c, or d*):

- (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(b)(3)(B).
- (c)  Attached the reporter's written waiver of a deposit for (*check either (i) or (ii)*):
- (i)  All of the designated proceedings.
- (ii)  Part of the designated proceedings.
- (d)  Attached a certified transcript under rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

- (1)  I request a copy of the reporter's transcript.
- (2)  I request that the reporters provide (*check (a), (b), or (c)*):
- (a)  My copy of the reporter's transcript in paper format.
- (b)  My copy of the reporter's transcript in computer-readable format.
- (c)  My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

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 ( <i>name</i> ):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on ( <i>date</i> ):	COURT OF APPEAL CASE NUMBER ( <i>if known</i> ):
<b>Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.</b>	

The appellant in this case has not been granted a waiver of the fees for preparing a clerk's transcript. I elect under rule 8.124(a) to use an appendix in lieu of a clerk's transcript.

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



\_\_\_\_\_  
 (SIGNATURE OF RESPONDENT OR ATTORNEY)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
APPELLANT:		
RESPONDENT:		
<b>STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)</b>		

**Notice: Please read Judicial Council form APP-001 before completing this form. Before a brief is due, parties may extend the time to file the brief up to a maximum of 60 days by filing one or more stipulations. However, parties may not stipulate to extend the time to file a brief if the court has previously granted an application to extend the time to file the brief. See California Rules of Court, rule 8.212(b).**

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a), to file the following brief (*check one*):
  - appellant's opening brief (AOB)
  - respondent's brief (RB)
  - combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
  - combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
  - appellant's reply brief (ARB)
2. This brief is now due on (date):
3. The parties agree to extend the due date by (number): \_\_\_\_\_ days, so that the new date is (date):
4. The time to file this brief (*check one*):
  - has not been extended by stipulations previously.
  - has been extended previously by one or more stipulations totaling (number) \_\_\_\_\_ days.

The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)
5. For attorneys filing on behalf of a client, I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)
6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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Date: \_\_\_\_\_  
(TYPE OR PRINT NAME)

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

\_\_\_\_\_ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date: \_\_\_\_\_  
(TYPE OR PRINT NAME)

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

\_\_\_\_\_ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date: \_\_\_\_\_  
(TYPE OR PRINT NAME)

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

\_\_\_\_\_ (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

**GENERAL INFORMATION****1 What does this information sheet cover?**

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is \$25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the **APPELLANT**, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the **RESPONDENT** and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**2 What is an appeal?**

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”).

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

**The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.**

**3 Do I need a lawyer to represent me in an appeal?**

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

**4 Where can I find a lawyer to help me with my appeal?**

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp](http://www.courts.ca.gov/selfhelp-lowcosthelp) in the Getting Started section.

**INFORMATION FOR THE APPELLANT**

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

**5 Who can appeal?**

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person’s guardian or conservator).

**6 Can I appeal any decision the trial court made?**

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

**7 How do I start my appeal?**

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

## 8 How do I “serve and file” the notice of appeal?

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

**This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

## 10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at [www.courts.ca.gov/7646.htm](http://www.courts.ca.gov/7646.htm) (note that the “Appeal and Writ Related Fees” section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

## 11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court’s judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

## 12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. “Serving and filing” this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—not you.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California

Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of the documents filed in the trial court (other than exhibits)
- A record of what was said in the trial court (this is called the “oral proceedings”)
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

### a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- (1) A clerk’s transcript
- (2) The original trial court file or
- (3) An agreed statement

Read below for more information about these options.

### (1) Clerk’s transcript

**Description:** A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

**Contents:** Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

**Cost:** The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

**Completion and delivery:** After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the

respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

## (2) Trial court file

**When available:** If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

**Cost:** As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

**Completion and delivery:** After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

## (3) Agreed statement

**Description:** An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

**When available:** If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

#### b. Record of what was said in the trial court (the “oral proceedings”)

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any

courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.
- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

#### (1) Reporter’s transcript

**Description:** A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

**When available:** If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose (“elect”) to have the court reporter prepare a reporter’s transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

**Contents:** If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use

the same form you used to tell the court you wanted to use a reporter's transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

**Cost:** The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at: [www.courtreportersboard.ca.gov/consumers/index.shtml#rtf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#rtf). If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

**Completion and delivery:** After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a

copy of the reporter's transcript will also be mailed to the respondent.

## (2) Official electronic recording or transcript

**When available:** In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

**Cost:** The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application to determine if you are eligible for a fee waiver.

**Completion and delivery:** After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

## (3) Agreed statement

**Description:** An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

**When available:** If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you

do not want to use one of these options, you can choose (“elect”) to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter’s transcript or official electronic recording, if they are available).

**Contents:** An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

**Preparation:** If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a “stipulation”) stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

#### (4) Statement on appeal

**Description:** A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

**When available:** If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or official electronic recording, if they are available).

**Contents:** A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).)

**Preparing a proposed statement:** If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

**Serving and filing a proposed statement:** You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**Review and modifications:** The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

**Completion and certification:** If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

**Sending statement to the appellate division:** Once the trial court judge certifies the statement on

appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

### c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk’s transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

### 14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

### 15 What is a brief?

**Description:** A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a

lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**Contents:** If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

**Serving and filing:** You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

**If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

### 16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent’s brief was filed, you may, but are not required to, file another brief replying to the respondent’s brief. This is called a “reply brief.”

### 17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

### 18 What is “oral argument?”

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if

one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

### **19 What happens after oral argument?**

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

### **20 What should I do if I want to give up my appeal?**

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

## **INFORMATION FOR THE RESPONDENT**

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

### **21 I have received a notice of appeal from another party. Do I need to do anything?**

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

### **22 If the other party appealed, can I appeal too?**

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

### **23 Is there a deadline to file a cross-appeal?**

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

### **24 I have received a notice designating the record on appeal from another party. Do I need to do anything?**

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate

division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question (13) above. Then read below for what your options are when the appellant has chosen that form of the record.

### **(a) Clerk's transcript**

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

### **(b) Reporter's transcript**

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record

on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

[www.courtreportersboard.ca.gov/consumers/index.shtml#trf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#trf). The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

### **(c) Agreed statement**

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

### **(d) Statement on appeal**

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant

will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called “amendments”) that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

The appellant serves and files the first brief, called an “appellant’s opening brief.” You may, but are not required to, respond by serving and filing a respondent’s brief within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

## **26** What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

“Oral argument” is the parties’ chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the

judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**

**Trial Court Case Name:**

The clerk will fill in the number below

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

\_\_\_\_\_

b. Appellant’s contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (*if different*): \_\_\_\_\_

Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

c. Appellant’s lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (*if different*): \_\_\_\_\_

Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**2** This is (*check a or b*):

- a.  The first appeal in this case.
- b.  A cross-appeal (an appeal filed after the first appeal in this case (*complete (1), (2), and (3)*)).
- (1) The notice of appeal in the first appeal was filed on (*fill in the date that the other party filed its notice of appeal in this case*): \_\_\_\_\_
- (2) The trial court clerk served notice of the first appeal on (*fill in the date that the clerk served the notice of the other party's appeal in this case*): \_\_\_\_\_
- (3) The appellate division case number for the first appeal is (*fill in the appellate division case number of the other party's appeal, if you know it*): \_\_\_\_\_

**3 Judgment or Order You Are Appealing**I am/My client is appealing (*check a or b*):

- a.  The final judgment in the trial court case identified in the box on page 1 of this form.  
The date the trial court entered this judgment was (*fill in the date*): \_\_\_\_\_
- b.  Other:
- (1)  An order made after final judgment in the case.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (2)  An order changing or refusing to change the place of trial (venue).  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (3)  An order granting a motion to quash service of summons.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (4)  An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (5)  An order granting a new trial.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (6)  An order denying a motion for judgment notwithstanding the verdict.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (7)  An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_



3 (continued)

(8)  An order appointing a receiver.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_

(9)  Other action (please describe and indicate the date the trial court took the action you are appealing):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

- a.  I have/My client has completed *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.
- b.  I/My client will complete *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

**REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.**

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

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Signature of appellant/cross-appellant or attorney*

**Appellant's Notice Designating  
Record on Appeal  
(Limited Civil Case)**

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

- b. Appellant’s contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Appellant’s lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

### Information About Your Appeal

2 On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

### Record of the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a.  **Clerk's Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.

(1) **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.

I request that the clerk include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	
(e)	

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

3 a. (continued)

(3) Exhibits.

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<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
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b)  I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (i) or (ii) and submit the checked document*):
  - (i)  An order granting a waiver of the cost under rules 3.50–3.58.
  - (ii)  An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- b.  **Agreed statement.** (*You must complete item 5d, below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.*)

**Record of Oral Proceedings in the Trial Court**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.*

4 I elect (choose)/My client elects to proceed (*check a or b*):

- a.  WITHOUT a record of the oral proceedings in the trial court (*skip item 5*); *sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): \_\_\_\_\_



4 (continued)

- b.  WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): \_\_\_\_\_

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a.  **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

(1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial court be included in the reporter’s transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.*)

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”

- (2) The proceedings designated in (1)  include  do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”



5 a. (continued)

- (3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.

(Write initials here): \_\_\_\_\_

- I request that the reporters provide (*check one*):
- (i)  My copy of the reporter's transcript in paper format.
  - (ii)  My copy of the reporter's transcript in computer-readable format.
  - (iii)  My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
  - (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58.
    - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
  - (2)  I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58.
    - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

5 (continued)

OR

d.  **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*

(1)  I have attached an agreed statement to this notice.

(2)  All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

e.  **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. (Check (1) or (2).):*

(1)  I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).*)

(2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

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

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a proposed statement on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of Appellant (
- the party who is filing this appeal*
- ):

Name: \_\_\_\_\_

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Appellant's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About Your Appeal**

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_, I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

**Proposed Statement**

**4 Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



(2) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."

**5 The Dispute**

a. In the trial court, I/my client was the (check one):

- plaintiff (the party who filed the complaint in the case).
- defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."

**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

Yes (fill out b)     No (skip to **7**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."

(2) Describe the second motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.



Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, item 6b(2)."

(3)  Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, item 6b(3)."

**7 Summary of Testimony and Other Evidence**

a. Was there a trial in your case?

No (skip items b, c, d, and e and go to item (8))

Yes (check (1) or (2) and complete items b, c, d, and e)

(1)  Jury trial

(2)  Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7b."

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in (4) for this appeal?

No

Yes (complete items (1), (2), and (3)):

(1) The witness's name is (fill in the witness's name): \_\_\_\_\_

(2) The witness testified on behalf of the (check one):  plaintiff.  defendant.



(3) This witness testified that *(Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in ④ for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness’s testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-104, Item 7c.”

d.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in ④ for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in ④ for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-104, Item 7d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in ④ for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-104, Item 7e.”

**⑧ The Trial Court's Findings**

Did the trial court make findings in the case?

No

Yes *(describe the findings made by the trial court)*: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-104, Item 8.”



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

**9 The Trial Court's Final Judgment**

The trial court issued the following final judgment in this case (*check all that apply and fill in any required information*):

a. I/My client was required to:

pay the other party damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

do the following (*describe what you were ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. The other party was required to:

pay me/my client damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

do the following (*describe what the other party was ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  Other(*describe*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."*

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for requesting an extension of time to file a brief in an appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving](http://www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving).
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number:

**Appellate Division Case Number:****1 Your Information**

- a. Name of party requesting extension of time to file brief:

\_\_\_\_\_

- b. Party's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (*if different*): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_

- c. Party's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_

State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (*if different*): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_**Fax:** \_\_\_\_\_

Case Name: \_\_\_\_\_

2 I am requesting an extension on the time to file:

- Appellant’s opening brief, which is now due on (date): \_\_\_\_\_
- Respondent’s brief, which is now due on (date): \_\_\_\_\_
- Appellant’s reply brief, which is now due on (date): \_\_\_\_\_

3 I am requesting that the time to file the brief identified in 2 be extended to (date): \_\_\_\_\_

4 I  have  have not received a notice under rule 8.882(c) from the clerk that this brief must be filed in 1 days.

5 The time to file the brief: (check all that apply):

- Has not been extended before
- Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_
- Has been extended before by the court. The court granted (number of extensions) \_\_\_\_\_ totaling (number of days) \_\_\_\_\_

6 I am not able to stipulate to an extension to file this brief because (check one):

- The other party is not willing to stipulate to an extension.
- Other reason (please describe the reason):

\_\_\_\_\_

7 The reason I need an extension to file this brief is (describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8 The last brief filed by any party in this case was:

- The appellant’s opening brief, filed on (date): \_\_\_\_\_
- The respondent’s brief, filed on (date): \_\_\_\_\_

9 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.

- I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

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

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of party or attorney

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for abandoning (giving up) an appeal in a **limited civil case**.
- *Limited Civil Cases* Before you fill out this form, read *Information on Appeal Procedures for* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courtinfo.ca.gov/selfhelp-serving/lowcost/getready.htm](http://www.courtinfo.ca.gov/selfhelp-serving/lowcost/getready.htm).
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of appellant (the party who is filing this appeal):

\_\_\_\_\_

- b. Appellant's contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Mailing address (*if different*): \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_

- c. Appellant's lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_  
 Street address: \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Mailing address (*if different*): \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_

Appellate Division

Case Name: \_\_\_\_\_

Appellate Division Case Number:

② On *(fill in the date)* \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

③ By signing and filing this form, I abandon/my client abandons that appeal.

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

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division. If you are serving a document electronically, please use *Proof of Electronic Service (Appellate Division)* (form APP-109E).
- The person who serves (delivers) a document in this case and who fills out this form:
  - Must be at least 18 years old
  - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

① At the time I served the documents listed in ④, I was at least 18 years old.

② I am not a party in the case identified in the box on the right side of this page.

③ My  home  business address is:

\_\_\_\_\_  
Street City State Zip

④ I mailed or personally delivered the following document, as indicated below (check or fill in the name of the document you are serving and check and complete either a or b).

- Notice of Appeal/Cross Appeal (Limited Civil Case)
- Notice Designating Record on Appeal (Limited Civil Case)
- Proposed Statement on Appeal (  Limited Civil Case  Misdemeanor  Infraction)
- Appellant's Opening Brief
- Respondent's Brief
- Appellant's Reply Brief
- Abandonment of Appeal (Limited Civil Case)
- Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)
- Other (write in the name of the document):

a.  Service by Mail

- (1) I put one copy of the document identified ④ in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.

**Superior Court of California, County of**

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

You fill in the number and name of the trial court case in which the decision being challenged was issued:

**Trial Court Case Number:**

**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**



(2) The envelope or envelopes were addressed as follows:

(a) Name of person served:

Address on envelope: \_\_\_\_\_

*Street*

*City*

*State Zip*

(b) (Name of person served):

Address on envelope: \_\_\_\_\_

*Street*

*City*

*State Zip*

Check here if you mailed copies of the document identified in ④ to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on (date): \_\_\_\_\_ from (city): \_\_\_\_\_

(state): \_\_\_\_\_ by depositing the envelope or envelopes (check one):

(a)  With the U.S. Postal Service or

(b)  At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b.  Service by Personal Delivery

I personally gave one copy of the document identified in ④ to each of the following people:

(1) (a) Name of person served:

(b) (Address where you gave the documents to this person:

\_\_\_\_\_  
*Street*

*City*

*State Zip*

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

(2) (a) Name of person served:

(b) (Address where you gave the documents to this person:

\_\_\_\_\_  
*Street*

*City*

*State Zip*

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

Check here if you gave copies of the document identified in ④ to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document, and the date and time you gave them the document. Write "APP-109, Item 4b" on the top of the page.

⑤ I declare under penalty of perjury under California state law that the information above is true and correct.

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

\_\_\_\_\_  
*Type or print server's name*



\_\_\_\_\_  
*Server signs here after serving*

*Clerk stamps date here when form is filed.***Instructions**

- This form is only for providing proof that a document has been electronically served (delivered) in a proceeding in the superior court appellate division.
- The person who serves (delivers) a document in this case and who fills out this form must be at least 18 years old.
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

*You fill in the name and street address of the court that issued the decision that is being challenged in this case:***Superior Court of California, County of***You fill in the number and name of the trial court case in which the decision being challenged was issued:***Trial Court Case Number:****Trial Court Case Name:***You fill in the appellate division case number (if you know it):***Appellate Division Case Number:**

① At the time I served the documents listed in ③, I was at least 18 years old.

② a. My  home  business address is:

\_\_\_\_\_  
*Street City State Zip*

b. My electronic service address is:

\_\_\_\_\_

③ I electronically served the following document, as indicated below (check or fill in the name of the document you are serving).

- Notice of Appeal/Cross Appeal (Limited Civil Case)*
- Notice Designating Record on Appeal (Limited Civil Case)*
- Proposed Statement on Appeal* (  *Limited Civil Case*  *Misdemeanor*  *Infraction*)
- Appellant's Opening Brief*
- Respondent's Brief*
- Appellant's Reply Brief*
- Abandonment of Appeal (Limited Civil Case)*
- Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*
- Other (write in the name of the document):*
- \_\_\_\_\_
- \_\_\_\_\_



④ I electronically served the document checked in ③ as follows

a. (1) Name of person served: \_\_\_\_\_

*On behalf of (name or names of parties represented, if person served is an attorney):*

\_\_\_\_\_

\_\_\_\_\_

(2) Electronic service address of person served: \_\_\_\_\_

(3) On (date): \_\_\_\_\_

b. (1) Name of person served:

*On behalf of (name or names of parties represented, if person served is an attorney):*

\_\_\_\_\_

\_\_\_\_\_

(2) Electronic service address of person served: \_\_\_\_\_

(3) On (date): \_\_\_\_\_

Check here if you gave copies of the document listed in ③ to more people. Attach a separate page listing the names of these people, the names of parties represented if the person served is an attorney, the electronic service address used for each person served, and the date you electronically served the document. Write "APP-109E, Item 4" on top of the page.

⑤ I declare under penalty of perjury under California state law that the information above is true and correct.

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

\_\_\_\_\_

*Type or print server's name*



\_\_\_\_\_

*Server signs here after serving*

## GENERAL INFORMATION

**What does this information sheet cover?**

This information sheet tells you how to fill out *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

**① What is “serving” a document?**

“Serving” a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1010.6–1013a (you can get a copy of these laws at any county law library or online at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)). There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

You may be able to serve a document electronically if the person being served has agreed to accept electronic service or if the court has ordered the person to accept electronic service. The requirements for electronic service are set out in California Code of Civil Procedure section 1010.6.

When a document is electronically served, it must be served either by electronic transmission or by electronic notification. “Electronic transmission” means sending the document to the person’s electronic service address, an e-mail address the person has given the court and the other parties to the case for this purpose. “Electronic notification” means sending a notice to the person with the exact name of the document and a hyperlink—a link to a web address—at which the document may be viewed and downloaded.

**② What documents have to be served?**

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

**③ Who can serve a document?**

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is over 18 years old. Service by mail or by personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party.

If you are a party in a case and wish to serve documents by mail or by personal delivery, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

If you are serving documents electronically, you can do so yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of everyone who must be served, as well as the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

#### 4 What is proof of service?

A “proof of service” shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document he or she wants to file. You can use *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) to give the court this proof of service in any case in the appellate division of the superior court. The server should follow the instructions below for completing the *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is filled out and signed. You will need to attach the original proof of service to the document you want to file.

If you are electronically filing the document, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing the document and produced upon request.

#### INFORMATION FOR THE SERVER

#### 5 Who fills out the *Proof of Service* or *Proof of Electronic Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. If you served the document by mail or personal delivery, you can use *Proof of Service (Appellate Division)* (form APP-109) to prepare this proof of service in any case in the appellate division. If you served the document electronically, you can use *Proof of Electronic Service (Appellate Division)* to prepare the proof of service.

#### 6 How do I fill out the *Proof of Service*?

These instructions are for *Proof of Service (Appellate Division)* (form APP-109), if you are serving the document by mail or personal delivery. If you are serving the document electronically, please see 7 below, for instructions on how to fill out *Proof of Electronic Service (Appellate Division)* (form APP-109E).

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division)* (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) (use the “fillable” version of the form).

#### Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is

another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

**Filling in items 1–5:**

Items ① and ②: You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item ③: Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item ④: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

a. Check box 4a. if you are serving the document by mail. **BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING**, fill in the following parts of the form.

- (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.
- (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write “APP-109, Item 4a.”
- (3) Fill in the date you are mailing the document and the city and state from which you are mailing it. **REMEMBER:** You must live or work in the county from which the document is mailed.

(a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

(b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

- b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party’s attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney’s office or with a person who is in charge of the attorney’s office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party’s residence between the hours of eight in the morning and six in the evening.

For each person to whom you personally delivered the document, fill in:

- (a) The person’s name.
- (b) The address at which you delivered the document to this person.
- (c) The date on which you delivered the document to this person.
- (d) The time at which you delivered the document.

If you need space to list more names, addresses, and delivery dates and times, check the box

under 4b. and attach a page listing this information. At the top of the page, write “APP-109, Item 4b.”

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division)* (form APP-109), give the original completed form to the party for whom you served the document.

## ⑦ How do I fill out the *Proof of Electronic Service*?

You can fill out most of the information on *Proof of Electronic Service (Appellate Division)* (form APP-109E) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109E you are swearing, under penalty of perjury, that the information you have put in the form is true and correct.**

You can fill out the *Proof of Electronic Service (Appellate Division)* (form APP-109E) online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) (use the “fillable” version of the form), or you can print it out and fill it in, printing neatly or using a typewriter.

### Filling in the top section of form APP-109E:

First box, right side of form: Leave this box blank for the court’s use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another

Judicial Council form, this information will be in the second box on the right-hand side of that form.

Third box, right side of form: Fill in the trial court case number and name. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of that form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the fourth box on the right-hand side of that form.

### Filling in items 1–5:

Item ①: You are stating, under penalty of perjury, that you are over the age of 18.

Item ②:

a. Check one of the boxes and provide your home or business address.

b. Fill in your electronic service address. This is the address at which you have agreed to accept electronic service, usually an e-mail address.

Item ③: Check or fill in the name of the document that you are serving. If the document you are serving is another judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

Item ④: Fill in the name of each person served, and the name or name of the parties represented, if the person served is an attorney. For each person served, fill in that person’s electronic service address and the date you served the person. If you

need more space to list additional persons served, check the box under item ④ b. and attach a page listing them, with their electronic service addresses and the date each person was served. At the top of the page, write “APP-109E, Item 4.”

When you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Appellate Division)* (form APP-109E) with this information filled in. Transmit the filled in form with the document you are serving to each person served.

Item ⑤: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on the *Proof of Electronic Service (Appellate Division)* (form APP-109E) is true and correct.** If you are not the party for whom the documents are served, give the original completed *Proof of Electronic Service (Appellate Division)* (form APP-109E) to the party for whom you served the document.

If you are electronically filing the document that is served, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing it and produced upon request.

**Respondent's Notice Designating  
Record on Appeal  
(Limited Civil Case)**

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: \_\_\_\_\_

- b. Respondent’s contact information (
- skip this if the respondent has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Respondent’s lawyer (
- skip this if the respondent does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About the Appeal**

- 2 On (fill in the date): \_\_\_\_\_ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_ the appellant filed an appellant’s notice designating the record on appeal.

**Record of the Documents Filed in the Trial Court**

- 4 The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
  - a.  **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*

**(1) Documents**

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”*

**(2) Exhibits**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number [such as Plaintiff’s #1 or Defendant’s A] and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<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 you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-110, item 4a(2).”*



**4** (continued)

- b.  **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check (1) or (2).)*
- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
- (2)  I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*
- (a)  An order granting a waiver of the cost under rules 3.50–3.58.
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

**Record of Oral Proceedings in the Trial Court**

**5** The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c):*

a.  **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.

(1)  **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter’s transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

*Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”*



5 a. (continued)

(2) Copy of reporter’s transcript.

- (a)  I request a copy of the reporter’s transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk’s office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.
- (b)  I request that the court reporter provide (*check one*):
  - (i)  My copy of the reporter’s transcript in paper format.
  - (ii)  My copy of the reporter’s transcript in computer-readable format.
  - (iii)  My copy of the reporter’s transcript in paper format and a second copy of the reporter’s transcript in computer-readable format.

OR

b.  **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. (*Check and complete (1) or (2).*):

- (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the cost of the transcript.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
  - (a)  An order granting a waiver of the cost under rules 3.50–3.58.
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

c.  **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. (*Check and complete (1) or (2).*):

- (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk’s estimate of the costs of this copy.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (*check (a) or (b) and submit the appropriate document*):
  - (a)  An order granting a waiver of the cost under rules 3.50–3.58
  - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

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

\_\_\_\_\_  
*Type or print your name*

▶ \_\_\_\_\_  
*Signature of respondent or attorney*

## GENERAL INFORMATION

## ① What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court. This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules) for the rules or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for the forms.

## ② What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

In this information sheet, we call the lower court the “trial court.”

## ③ Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).



#### 4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

#### 5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

#### 6 Can a writ be used to address any errors made by a trial court?

No.

**Writs can only address certain legal errors.** Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

**There must be no other adequate remedy.** The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

**Statutory writs:** There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

**Common law writs:** Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

### 7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some

city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

### 8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.

### 9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated



and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

### **INFORMATION FOR THE PETITIONER**

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

#### **10 Who can ask for a writ?**

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

#### **11 How do I ask for a writ?**

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate

remedy at law, and what order you are requesting the appellate division to make.

#### **12 How do I prepare a writ petition?**

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). This form asks you to fill in the information that needs to be in a writ petition.

##### **a. Description of your interest in the trial court’s ruling**

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

##### **b. Description of the legal error you believe the trial court made**

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do



- Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

### c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

***Your petition needs to show that a writ is the only way to fix the trial court's error.*** To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having “no adequate remedy at law”).

***This will be hard if the trial court's ruling can be appealed.*** If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge

can be appealed, either immediately or as part of an appeal of the final judgment.

### ***Here are some trial court rulings that can be appealed.***

There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

***If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error.*** If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called “irreparable” injury or harm). For example, because of



the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

#### d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel (“vacate”) its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a “stay.” If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the “Stay requested” box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

#### e. Verifying the petition

Petitions for writs must be “verified.” This means that either the petitioner or the petitioner’s attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

### 13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called “supporting documents.”

**What needs to be in the supporting documents.** The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the “oral proceedings”) and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

**Record of the oral proceedings.** There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the “verbatim” record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript,” for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or

- o Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

**Copies of documents from the trial court.** Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

**What if I cannot get copies of the documents from the trial court because of an emergency?** Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

**Format of the supporting documents.** Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**14 Is there a deadline to ask for a writ?**

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

**15 How do I “serve” my petition?**

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the petition to the real party in interest and the respondent court in the way required by law. If the petition is mailed or



personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail, in person, or electronically), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

## 17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application

either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

## 18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- a. Issue a stay
- b. Summarily deny the petition
- c. Issue an alternative writ or order to show cause
- d. Notify the parties that it is considering issuing a preemptory writ in the first instance
- e. Issue a preemptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

### a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

### b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.



**c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**d. Peremptory writ in the first instance**

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so

unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**19 What should I do if the court denies my petition?**

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

**INFORMATION FOR A REAL PARTY IN INTEREST**

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.



**20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?**

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may

need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the preliminary opposition to the other parties in the way required by law. If the preliminary opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail, in person, or electronically), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California



Courts Online Self-Help Center at  
[www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?**

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You

should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the return to the other parties in the way required by law. If the return is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail, in person, or electronically), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California



Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?**

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question 18, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the opposition to the

other parties in the way required by law. If the opposition is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail, in person, or electronically), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**23 What happens after I serve and file my return or opposition?**

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

# Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

Clerk stamps date here when form is filed.

\_\_\_\_\_  
**Petitioner**

(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of \_\_\_\_\_

\_\_\_\_\_  
**Respondent**

(fill in the name of the court whose action or ruling you are challenging)

\_\_\_\_\_  
**Real Party in Interest**

(fill in the name of any other parties in the trial court case)

Clerk will fill in the number below:

**Appellate Division Case Number:**

**Stay requested**

(see item ⑫ c. on page 6)

## Instructions

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below\*).
  - Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
  - Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
  - Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
  - Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
  - Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
  - Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.
- \* **Small Claims cases.** If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.



Case Name: \_\_\_\_\_

**1 Your Information**

a. Petitioner (the party who is asking for the writ):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street* *City* *State* *Zip*

Mailing address (if different): \_\_\_\_\_  
*Street* *City* *State* *Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. Petitioner's lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street* *City* *State* *Zip*

Mailing address (if different): \_\_\_\_\_  
*Street* *City* *State* *Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_

**The Trial Court Action or Ruling You Are Challenging**

**2** I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name (fill in the trial court case name): \_\_\_\_\_

b. Case number (fill in the trial court case number): \_\_\_\_\_

**3** The trial court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4** The trial court took this action or made this ruling on the following date (fill in the date): \_\_\_\_\_

**5** If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**The Parties in the Trial Court Case**

- 6 I/My client (*check and fill in a or b*):
  - a.  was a party in the case identified in 2.
  - b.  was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court (*describe how you/your client will be directly and negatively affected by the trial court’s action or ruling*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 7 The other party or parties in the case identified in 2 was/were (*fill in the names of the parties*):

\_\_\_\_\_

\_\_\_\_\_

**Appeals or Other Petitions for Writs in This Case**

- 8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? (*Check and fill in a or b*):
  - a.  No
  - b.  Yes (*fill in the appellate division case number of the appeal*): \_\_\_\_\_

- 9 Have you filed a previous petition for a writ challenging this trial court action or ruling? (*Check and fill in a or b*):
  - a.  No
  - b.  Yes (*Please provide the following information about this previous petition*).

- (1) Petition title (*fill in the title of the petition*): \_\_\_\_\_
- (2) Date petition filed (*fill in the date you filed this petition*): \_\_\_\_\_
- (3) Case number (*fill in the case number of the petition*): \_\_\_\_\_

*If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write “APP-151, item 9.”*

**Reasons for This Petition**

- 10 The trial court made the following legal error or errors when it took the action or made the ruling described in 3 (*check and fill in at least one*):
  - a.  The trial court has not done or has refused to do something that the law says it *must* do.

- (1) *Describe what you believe the law says the trial court must do:* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this:* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**10** (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b.  The trial court has done something that the law says the court *cannot or must not do*.

(1) *Describe what the trial court did:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c.  The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**10** (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write “APP-151, item 10c.”*

*Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write “APP-151, item 10d.”*

**11** This petition will be granted only if there is no other adequate way to address the trial court’s action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Order You Are Asking the Appellate Division to Make**

**12** I request that this court (*check and fill in all that apply*):

a.  order the trial court to do the following (*describe what, if anything, you want the trial court to be ordered to do*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  order the trial court not to do the following (*describe what, if anything, you want the trial court to be ordered NOT to do*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**12** (continued)

- c.  issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form*):

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I/My client:

- (1)  asked the trial court to stay these proceedings, but the trial court denied this request (*include in your supporting documents a copy of the trial court's order denying your request for a stay*).
- (2)  did not ask the trial court to stay these proceedings for the following reasons (*describe below why you did not ask the trial court to stay these proceedings*):

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- d.  take other action (*describe*): \_\_\_\_\_

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- e.  grant any additional relief that the appellate division decides is fair and appropriate.

**Supporting Documents**

**13** Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

- a.  Yes, a transcript or an official electronic recording of what was said in the trial court is attached.
- b.  No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) (*Check (1) or (2)*):
  - (1)  stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.
  - (2)  explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.





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): _____	<i>FOR COURT USE ONLY</i>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>	
<b>PEOPLE OF THE STATE OF CALIFORNIA</b>	
vs.	
Defendant: Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
<b>NOTICE OF APPEAL—FELONY (DEFENDANT)</b> <b>(Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)</b>	CASE NUMBER: _____

**NOTICE**

- **You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.  
 NAME of defendant: \_\_\_\_\_  
 DATE of the order or judgment: \_\_\_\_\_
2. **Complete either item a. or item b. Do not complete both.**
  - a. *If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:*
    - (1)  This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
    - (2)  This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
    - (3)  This appeal challenges the validity of the plea or admission. (*You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.*)
    - (4)  Other basis for this appeal (*you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature*) (*specify*): \_\_\_\_\_
  - b. *For all other appeals, check one:*
    - (1)  This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
    - (2)  This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
    - (3)  Other (*specify*): \_\_\_\_\_
3.  Defendant requests that the court appoint an attorney for this appeal. Defendant  was  was not represented by an appointed attorney in the superior court.
4. Defendant's mailing address is:  same as in attorney box above.  
 as follows: \_\_\_\_\_

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

\_\_\_\_\_ (TYPE OR PRINT NAME) ▶ \_\_\_\_\_ (SIGNATURE OF DEFENDANT OR ATTORNEY)

<b>PEOPLE OF THE STATE OF CALIFORNIA</b> vs. Defendant:	CASE NUMBER:
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**REQUEST FOR CERTIFICATE OF PROBABLE CAUSE**

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are (*specify*):

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 DEFENDANT OR ATTORNEY)

**COURT ORDER**

This Request for Certificate of Probable Cause is (*check one*):  granted  denied.

Date:

\_\_\_\_\_  
JUDGE



APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant  is  is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

*(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):*

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

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

\_\_\_\_\_  
(TYPE OR PRINT NAME)



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

Order on Application is  below  on a separate document

### ORDER

EXTENSION OF TIME IS:

Granted to (date): \_\_\_\_\_

Denied

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

\_\_\_\_\_  
(SIGNATURE OF PRESIDING JUSTICE)

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for appealing in a **misdemeanor case**. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**  
  
**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1)  was the appellant's lawyer in the trial court. (2)  is the appellant's lawyer for this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**2 Judgment or Order You Are Appealing**

I am/My client is appealing (*check one*):

- a.  The final judgment of conviction in this case (Penal Code section 1466(b)(1)).
  - I am/My client is contesting only the conditions of the probation.
- b.  The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(b)(1)).
  - An order modifying the conditions of probation.
  - Other(*describe the action you are appealing and give the date the trial court took the action*):  
\_\_\_\_\_
- c.  The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
- d.  Other action (*describe the action you are appealing and give the date the trial court took the action*):  
\_\_\_\_\_  
\_\_\_\_\_

**3 Record on Appeal**

*See form CR-131-INFO for information about the record on appeal.*

- a.  I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).
- b.  I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings.

**4 Court-Appointed Lawyer**

- a. I/My client  was  was not represented by the public defender or another court-appointed lawyer in the trial court.
- b. I am/My client is (*check (1) or (2)*):
  - (1)  asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.
  - (2)  **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

**REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.**

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

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for requesting that the court appoint a lawyer to represent a person appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
  - (1) your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments), or
  - (2) you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**

**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About Your Case**

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)

- a.  Yes
- b.  No (Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.)

3 Describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):

- a.  Jail time
- b.  A fine (including penalty and other assessments) (fill in the amount of the fine): \$ \_\_\_\_\_
- c.  Restitution (fill in the amount of the restitution): \$ \_\_\_\_\_
- d.  Probation (fill in the amount of time on probation): \_\_\_\_\_
- e.  Other punishment (describe any other punishment that the trial court gave you/your client in this case):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4 Describe any significant harm that you are/your client is likely to suffer because of this conviction:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.**

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

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Signature of appellant or attorney

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for giving the court notice about the record on appeal in a **misdemeanor case**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
  - (1) 20 days after you file your notice of appeal, or, if it is later
  - (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court-appointed lawyer within 20 days after you file your notice of appeal).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**

**Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1)  was the appellant's lawyer in the trial court.      (2)  is the appellant’s lawyer for this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Fax:** \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

## Information About Your Appeal

- ② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

## Your Choices About the Record on Appeal

### Stipulation for Limited Record

- ③  The respondent and I/my client have agreed (“stipulated”) under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

### Record of Oral Proceedings

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.*

- ④ I elect (choose)/My client elects to proceed (check a or b):
- a.  WITHOUT a record of the oral proceedings in the trial court (skip item ⑤; sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.
- (Write initials here): \_\_\_\_\_
- b.  WITH a record of the oral proceedings in the trial court (complete item ⑤ below). I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one— a, b, c, or d*):

- a.  **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2)):*
- (1)  I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free reporter's transcript.*)

OR

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free reporter's transcript.*)

OR



Trial Court Case Name: \_\_\_\_\_

5 (continued)

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free reporter's transcript.)

OR

- d.  **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):
- (1)  I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Misdemeanor) (form CR-135) to prepare and file this proposed statement. You can get a copy of form CR-135 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

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

\_\_\_\_\_  
Type or print your name\_\_\_\_\_  
Signature of appellant or attorney

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a proposed statement on appeal in an **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**The People of the State of California  
v.

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1)  was the appellant's lawyer in the trial court. (2)  is the appellant's lawyer for this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About Your Appeal**

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_, I/my client filed a Notice Regarding Record on Appeal, choosing to use a statement on appeal as the record of what was said in this case.

**Proposed Statement**

**4 Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal that is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**4** b. (continued)

(2) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 4."

**5 The Charges Against Me/My Client**

a. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed with the court by the prosecutor): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. I/My client (check (1), (2), or (3))

(1)  pleaded not guilty to all of the charges.

(2)  pleaded guilty to only the following charges: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3)  pleaded guilty to all of these charges.



**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

Yes (fill out b)       No (skip to item 7)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1) Describe the first motion: \_\_\_\_\_

\_\_\_\_\_

The motion was filed by the  prosecutor.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, Item 6b(1)."

(2) Describe the second motion: \_\_\_\_\_

\_\_\_\_\_

The motion was filed by the  prosecutor.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "CR-135, item 6b(2)."



- (3)  Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-135, item 6b(3).”

**7 Summary of Testimony and Other Evidence**

a. Was there a trial in your case?

No (skip items b, c, d, e, and f, and go to item (8))

Yes (complete items b, c, d, e, and f)

(1)  Jury trial

(2)  Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client’s testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/your client’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7b.”

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): \_\_\_\_\_

(2) This officer testified that (Write a complete and accurate summary of the officer’s testimony that is relevant to the reasons you gave in (4) for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer’s testimony or any exhibits the officer asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7c.”



Trial Court Case Name: \_\_\_\_\_

7 (continued)

- d.  Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 4 for this appeal?
  - No
  - Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): \_\_\_\_\_

(2) The witness  was  was not an officer from the police department, sheriff’s office, or other government agency that charged me/my client.

(3) The witness testified on behalf of  me/my client.  the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-135, Item 7d.”

- e.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client’s behalf or the prosecution’s behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-135, item 7e.”

- f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write “CR-135, Item 7f.”



Trial Court Case Name: \_\_\_\_\_

**8 The Trial Court's Findings**

- a.  I/My client was found guilty of the following offenses (*list all of the offenses for which you were/your client was found guilty*): \_\_\_\_\_  
\_\_\_\_\_
- b.  I/My client was found not guilty of the following offenses (*list all of the offenses for which you were/your client was found not guilty*): \_\_\_\_\_  
\_\_\_\_\_

**9 The Sentence**

The trial court imposed the following fine or other punishment on me/my client (*check all that apply and fill in any required information*):

- a.  Jail time (*fill in the amount of time you are/your client is required to spend in jail*): \_\_\_\_\_
- b.  A fine (including penalty and other assessments) (*fill in the amount of the fine*): \$ \_\_\_\_\_
- c.  Restitution (*fill in the amount of the restitution*): \$ \_\_\_\_\_
- d.  Probation (*fill in the amount of time you are/your client is required to be on probation*): \_\_\_\_\_
- e.  Other punishment (*describe any other punishment that the trial court imposed in this case*): \_\_\_\_\_  
\_\_\_\_\_

**REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.**

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

\_\_\_\_\_  
*Type or print name*

 \_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for abandoning (giving up) an appeal in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:***The People of the State of California v.*

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of appellant (the party who is filing this appeal):
- 
- \_\_\_\_\_

Street address: \_\_\_\_\_

*Street**City**State**Zip*

Mailing address (if different): \_\_\_\_\_

*Street**City**State**Zip*

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_

- b. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_

State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

*Street**City**State**Zip*

Mailing address (if different): \_\_\_\_\_

*Street**City**State**Zip*

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_**Fax:** \_\_\_\_\_

Appellate Division

Case Name: \_\_\_\_\_

Appellate Division Case Number:

2 On (*fill in the date*): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

### 1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

### 2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

### 3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the “trial court” in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division’s job is to review a record of what happened in the trial court and the trial court’s decision to see if certain kinds of legal errors were made in the case:

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

“prejudicial error”). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

**The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.**

### 4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).



If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

### 5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

### 6 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

### 7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get

form CR-142 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

### 8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes (“renders”) its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

### 9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

### 10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

**Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence.** To postpone your sentence, you must ask the trial court for a “stay” of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court



unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

### 11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

### 12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the

record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

### 13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

- a. You can use a *statement on appeal*.
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree (“stipulate”), you can use the official electronic recording itself as the record, instead of a transcript.
- c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”

Read below for more information about these options.

#### a. Statement on appeal

**Description:** A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (the term “judge” includes commissioners and temporary judges).

**When available:** If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or electronic recording, if they are available).

**Contents:** A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and



- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).)

**Preparing a proposed statement:** If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

**Serving and filing a proposed statement:** You must serve and file your proposed statement within 20 days after you file your notice of appeal. “Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the proposed statement to the prosecuting attorney and any other party in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the

clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**Review and modifications:** The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

**Completion and certification:** If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

**Sending the statement to the appellate division:**

Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.

#### b. Official electronic recording or transcript from official recording

**When available:** In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. Some courts also have local



rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a “stipulation”) to your notice regarding the oral proceedings.

**Cost:** Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was

misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.917.

**Completion and delivery:** Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk’s transcript.

### c. Reporter’s transcript

**When available:** In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

**Cost:** Ordinarily, the appellant must pay for preparing a reporter’s transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 you can decide to use a different form of the record or take other action instead of proceeding with a reporter’s transcript.



If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.919.

**Completion and delivery:** Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

#### 14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).)
- **Exhibits submitted during trial:** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

#### 15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

#### 16 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your



brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You

should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**Contents:** If you are the appellant (the party who is appealing), your brief, called the “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the statement on appeal (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

**Serving and filing:** You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the brief to the respondent (the prosecuting agency) and any other party in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to

stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

### 17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent’s brief was served, you may, but are not required to, serve and file another brief replying to the respondent’s brief. This is called a “reply brief.”

### 18 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

### 19 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person.

You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal



or ask the judges if they have any questions you could answer.

### **20 What happens after oral argument?**

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

### **21 What should I do if I want to give up my appeal?**

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

The clerk will fill in the number below:

**Appellate Division Case Number:****1 Your Information**

- a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form is (check (1) or (2)):

(1)  was the appellant's lawyer in the trial court. (2)  is the appellant's lawyer for this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**2 Judgment or Order You Are Appealing**

I am/My client is appealing (check a, b, or c):

- a.  the final judgment of conviction in the case (Pen. Code § 1466(2)(A)).  
The trial court issued (rendered) this judgment on (fill in the date):
- b.  an order made by the trail court after judgment that affects an important (substantial) right of mine/my client (Pen. Code § 1466(20(B))).  
The trial court issued (rendered) this order on (fill in the date):
- c.  Other (Describe the action you are appealing and indicate the date the trial court took the action.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Your Choices About the Record on Appeal**

**Stipulation for Limited Record**

- 3  The respondent and I/my client have agreed (“stipulated”) under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. *At the top of each page write “CR-142, item 3.”*

**Record of Oral Proceedings**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.*

- 4 I elect (choose)/My client elects to proceed (check a or b):
  - a.  WITHOUT a record of the oral proceedings in the trial court (skip item 5); sign and date this form ). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.  

(Write initials here): \_\_\_\_\_
  - b.  WITH a record of the oral proceedings in the trial court (complete item 5 below). I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.  

(Write initials here): \_\_\_\_\_

- 5 I want to use the following record of what was said in the trial court proceedings in my case (check and complete only one—a, b, c, or d):
  - a.  **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):*



**5** (continued)

- (1)  I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)*
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and (1) or (2).):*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free transcript.)*

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*
- (1)  I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

5 (continued)

OR

- d.  **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check (1) or (2)):*
- (1)  I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the cost of the transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free reporter's transcript.)

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the completed form and proof of service on each of the other parties to the clerk’s office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:**  
  
**Trial Court Case Name:**  
*The People of the State of California*  
v.

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1)  was the appellant’s lawyer in the trial court. (2)  is the appellant’s lawyer for this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Fax:** \_\_\_\_\_



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

**Information About Your Appeal**

2 On (fill in the date): \_\_\_\_\_, I/my client filed a *Notice of Appeal and Record on Appeal (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

**Proposed Statement**

3 **Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a.  There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) Describe the error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**3** (continued)

(3) Describe the error: \_\_\_\_\_  
\_\_\_\_\_

Describe how this error harmed you/your client: \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 3."

**4 The Charges Against Me/My Client**

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): \_\_\_\_\_

b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): \_\_\_\_\_  
\_\_\_\_\_

c. I/My client (check (1), (2), or (3))

(1)  pleaded not guilty to all of the charges.

(2)  pleaded guilty to only the following charges: \_\_\_\_\_  
\_\_\_\_\_

(3)  pleaded guilty to all of the charges.

**5 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **3** for this appeal?

Yes (fill out b)     No (skip to item **6**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **3** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1)  I/My client made the following requests (motions) in the trial court (check all that apply):

(a)  To submit a photograph or photographs as evidence (describe the photographs):  
\_\_\_\_\_  
\_\_\_\_\_

There  was  was not a hearing on this motion.



Trial Court Case Name: \_\_\_\_\_

5 b.(1)(a) (continued)

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_

The court  did  did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."

(b)  To submit a map or maps as evidence (describe the maps): \_\_\_\_\_

\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_

The court  did  did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."

(c)  To submit other material as evidence (describe what you asked to submit as evidence):

\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_

The court  did  did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."

(d)  Other (describe any other request you made in the trial court and whether the court granted or denied this request): \_\_\_\_\_

\_\_\_\_\_

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."



Trial Court Case Name: \_\_\_\_\_

5 b. (continued)

(2)  The prosecutor made the following request (motion) in the trial court (describe any request the prosecutor made in the trial court and whether the court granted or denied this request):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The court  did  did not grant this motion.

Other (describe any other action the trial court took on this motion): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."

(3)  Check here if other motions were filed that are relevant to the reasons you gave in 3 for this appeal, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No  (skip items b, c, d, e, and f, and go to item 7)

Yes  (complete items b, c, d, e, and f)

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in 3 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6b."



Trial Court Case Name: \_\_\_\_\_

**6** (continued)

c. Did an officer from the police department, sheriff’s office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer’s name): \_\_\_\_\_

(2) This officer testified that (Write a complete and accurate summary of the officer’s testimony that is relevant to the reasons you gave in **3** for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer’s testimony or any exhibits the officer asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the officer’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “CR-143, Item 6c.”

d.  Were there any other witnesses at the trial?

No

Yes (fill out (1)–(4)):

(1) The witness’s name is (fill in the witness’s name): \_\_\_\_\_

(2) The witness  was  was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of  me/my client.  the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in **3** for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e.  Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in **3** for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client’s behalf or the prosecution’s behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in **3** for this appeal, and indicating whether any objections were made concerning the witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “CR-143, item 6e.”



Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

c. The following charges were dismissed after proof of correction was shown to the judge (list all of the charges that were dismissed): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a.  A fine of (fill in the amount of the fine): \$ \_\_\_\_\_

b.  Traffic school

c.  Community service (fill in the number of hours): \_\_\_\_\_

d.  Other punishment (describe any other punishment that the court imposed in this case):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

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

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Signature of appellant or attorney

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for abandoning (giving up) an appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:***The People of the State of California v.*

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of appellant (the party who is filing this appeal):
- 
- \_\_\_\_\_

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (if different): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_

- b. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_

State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_

Street

City

State

Zip

Mailing address (if different): \_\_\_\_\_

Street

City

State

Zip

Phone: \_\_\_\_\_

**E-mail:** \_\_\_\_\_**Fax:** \_\_\_\_\_

Appellate Division

Case Name: \_\_\_\_\_

Appellate Division Case Number:

2 On (*fill in the date*): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

<b>COURT OF APPEAL</b>		<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:		SUPERIOR COURT CASE NUMBER:		
NAME:		<i>FOR COURT USE ONLY</i>		
FIRM NAME:				
STREET ADDRESS:				
CITY:	STATE:			ZIP CODE:
TELEPHONE NO.:	FAX NO.:			
E-MAIL ADDRESS:				
ATTORNEY FOR ( <i>name</i> ):				
APPELLANT:				
RESPONDENT:				
<b>RECOMMENDATION FOR APPOINTMENT OF                  APPELLATE ATTORNEY FOR CHILD                  (California Rules of Court, Rule 5.661)</b>				

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:
-----------------------	------------------------------

1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
  - a. Name:
  - b. I am the  trial counsel  guardian ad litem  child
  - c. Address:
  - d. Telephone number:
  
2. I recommend that an appellate attorney be appointed for the child in this case.
  
3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons (*check all that apply*):
  - a.  An actual or potential conflict exists between the interests of the child and the interests of any respondent.
  - b.  The child did not have an attorney serving as his or her guardian ad litem in the trial court.
  - c.  The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
    - (1)  The child expresses a desire to participate in the appeal; or
    - (2)  The child's wishes differ from his or her trial counsel's position.
  - d.  The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
  - e.  The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
  - f.  Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
  - g.  The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
  - h.  The existence of any other factors relevant to the child's best interests (*specify*):

4. State the facts that support your recommendation:

Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE:

COURT OF APPEAL CASE NUMBER:

**PROOF OF SERVICE**

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

## 1. District appellate project

a. Name and address:

b. Date of service:

c. Method of service:

## 2. Other

a. Name and address:

b. Date of service:

c. Method of service:

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY: STATE: ZIP CODE:		
TELEPHONE NO.: FAX NO.:		
E-MAIL ADDRESS:		SUPERIOR COURT CASE NUMBER(S):
ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT:		
RESPONDENT:		
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)</b>		

1. I (name): \_\_\_\_\_ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): \_\_\_\_\_ be extended to (date): \_\_\_\_\_

2. I  have  have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): \_\_\_\_\_ extensions from the court totaling (total number of days): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (date): \_\_\_\_\_

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed (check one):

- a contested hearing
- an admission

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

*(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):*

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is  below  on a separate document

**ORDER**

EXTENSION OF TIME IS:

Granted to (date): \_\_\_\_\_

Denied

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

\_\_\_\_\_

(SIGNATURE OF PRESIDING JUSTICE)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (name):			
Case Name: In re _____, person(s), coming under the juvenile court law			
APPELLANT:			
RESPONDENT:			
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)</b>			

1. I (name): \_\_\_\_\_ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): \_\_\_\_\_ be extended to (date): \_\_\_\_\_

2. I  have  have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): \_\_\_\_\_ extensions from the court totaling (total number of days): \_\_\_\_\_

Did the court mark any previous extension "no further?"  Yes  No

4. The last brief filed by any party was:  AOB  RB  RB and AOB  ARB and RB  
filed on (date): \_\_\_\_\_

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The order appealed from was made under Welfare and Institutions Code (check all that apply):

- a.  section 360 (declaration of dependency)  Removal of custody from parent or guardian  Other orders  
 with review of section 300 jurisdictional findings
- b.  section 366.26  
 Termination of parental rights  Appointment of guardian  Planned permanent living arrangement

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

6. c.  Section 366.28  
 d.  Other appealable orders relating to dependency (*specify*):

7. The reasons that I need an extension to file this brief are stated:  
 below.  
 on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

*(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)*

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

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

Order on Application is  below  on a separate document

**ORDER**

EXTENSION OF TIME IS:

Granted to (*date*): \_\_\_\_\_  
 Denied

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

\_\_\_\_\_  
 (SIGNATURE OF PRESIDING JUSTICE)

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>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS (California Rules of Court, Rule 8.454)</b>	CASE NUMBER:

**NOTICE**

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
  - a.  child's caretaker (specify dates in your care):
  - b.  child
  - c.  county welfare department
  - d.  legal guardian
  - e.  other (state relationship to child or interest in the case):
5. Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_\_
6. a. On (date): \_\_\_\_\_ the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
- b. On (date): \_\_\_\_\_ the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.

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

---

(TYPE OR PRINT NAME)
(SIGNATURE OF  PETITIONER  CHILD'S ATTORNEY)

**The Notice of Intent to File Writ Petition must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.**

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

## HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

**SEE CAL. RULES OF COURT, RULES 8.454–8.456**

## WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

## SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER <i>(Court will provide)</i> :
------------------------	-------------------------------------	---

In re the Matter of:

---

(Name and date of birth of subject child or children)

---

Petitioners

v.

Superior Court of California, County of

---

Respondent

---

Real Party in Interest

---

FILE STAMP

Superior Court No.

Superior Court No.

Related Appeal Pending

Appellate Court No.

**PETITION FOR EXTRAORDINARY WRIT  
(California Rules of Court, Rules 8.452, 8.456)**

STAY REQUESTED *(see item 11)*.

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

CASE NAME:	CASE NUMBER:
------------	--------------

1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
  - a. Name:
  - b. Address:
  
  - c. Phone number:
  - d. E-mail:
2. Petitioner is the
 

<ol style="list-style-type: none"> <li>a. <input type="checkbox"/> child</li> <li>b. <input type="checkbox"/> mother</li> <li>c. <input type="checkbox"/> father</li> <li>d. <input type="checkbox"/> guardian</li> </ol>	<ol style="list-style-type: none"> <li>e. <input type="checkbox"/> de facto parent</li> <li>f. <input type="checkbox"/> county welfare department</li> <li>g. <input type="checkbox"/> district attorney</li> <li>h. <input type="checkbox"/> other (<i>state relationship to child or interest in the case</i>):</li> </ol>
---	--
3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children (*specify number of children*): \_\_\_\_\_
  - a. Name of child:  
Child's date of birth:
  - b. Name of child:  
Child's date of birth:
  - c. Name of child:  
Child's date of birth:
  - d. Name of child:  
Child's date of birth:  
 Continued in Attachment 3.
4. This petition seeks extraordinary relief from the order of (*name*):
  - a.  setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.  
OR
  - b.  designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.  
OR
  - c.  other (*specify*):
5. The challenged order was made on (*date of hearing*):
6. The order was erroneous on the following grounds (*specify*):
7.
  - a.  Supporting documents are attached.
  - b.  Because of exigent circumstances, supporting documents are not attached (*explain*):
8. Summary of factual basis for petition (*Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record*):

Additional pages attached.

CASE NAME:	CASE NUMBER:
------------	--------------

9. Points and authorities in support of the petition are attached (*number of pages attached*):

10. Petitioner requests that this court direct the trial court to (*check all that apply*):

- a.  Vacate the order for hearing under section 366.26.
- b.  Vacate the order designating a specific placement after termination of parental rights under section 366.28.
- c.  Remand for hearing.
- d.  Order that reunification services be  
 provided       continued.
- e.  Order visitation between the child and petitioner.
- f.  Return or grant custody of the child to petitioner.
- g.  Terminate dependency.
- h.  Other (*specify*):

11.  Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

- a. Hearing date (*must specify*):
- b. Reasons for stay (*specify*):

Additional pages attached.

12. Total number of pages attached:

13 I am the  petitioner       attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

\_\_\_\_\_  
 (SIGNATURE OF  PETITIONER       ATTORNEY)

Address:

Name:

Address:

CDC or ID Number:

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner	vs.	Respondent
------------	-----	------------

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of the court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

**This petition concerns:**

- A conviction                       Parole
- A sentence                               Credits
- Jail or prison conditions               Prison discipline
- Other (*specify*):

1. Your name:
2. Where are you incarcerated?
3. Why are you in custody?    Criminal conviction       Civil commitment

*Answer items a through i to the best of your ability.*

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
- b. Penal or other code sections:
- c. Name and location of sentencing or committing court:
- d. Case number:
- e. Date convicted or committed:
- f. Date sentenced:
- g. Length of sentence:
- h. When do you expect to be released?
- i. Were you represented by counsel in the trial court?    Yes       No      *If yes, state the attorney's name and address:*
4. What was the LAST plea you entered? (*Check one*):
- Not guilty     Guilty     Nolo contendere     Other:
5. If you pleaded not guilty, what kind of trial did you have?
- Jury       Judge without a jury       Submitted on transcript       Awaiting trial

## 6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (*If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.*)

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (*If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

b. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. **Ground 2 or Ground \_\_\_\_\_** *(if applicable)*:

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment?  Yes  No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
- b. Result:
- c. Date of decision:
- d. Case number or citation of opinion, if known:
- e. Issues raised: (1)
- (2)
- (3)
- f. Were you represented by counsel on appeal?  Yes  No If yes, state the attorney's name and address, if known:
9. Did you seek review in the California Supreme Court?  Yes  No If yes, give the following information:
- a. Result:
- b. Date of decision:
- c. Case number or citation of opinion, if known:
- d. Issues raised: (1)
- (2)
- (3)
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
11. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
- b. Did you seek the highest level of administrative review available?  Yes  No  
*Attach documents that show you have exhausted your administrative remedies.*



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate and Trial Court Procedure: Privacy in Documents (Adopt Cal. Rules of Court, rules 1.201, 8.41, and 8.90; amend rule 1.20; revise form MC 120)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990 [susan.mcmullan@jud.ca.gov](mailto:susan.mcmullan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Privacy protection – Consider whether to recommend amendments to the Rules of Court or other actions to better protect the privacy of victims, witnesses, and others who are described in or otherwise affected by appellate opinions.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR16-\_\_**

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Title	Action Requested
Appellate and Trial Court Procedure: Privacy in Documents	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 1.201, 8.41, and 8.90; amend rule 1.20; revise form MC-120	January 1, 2017
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

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### **Executive Summary and Origin**

Based on concerns about privacy protection raised by appellate justices and individuals whose identity or personal information has been revealed in appellate opinions, the Appellate Advisory Committee proposes new rule 8.90 to provide guidance on the use of names in appellate court opinions. The rule would clarify that a reviewing court has discretion to use the first name and last initial—or in certain circumstances, initials only—of specific categories of individuals such as victims in criminal cases, wards in guardianship proceedings, and patients in mental health proceedings. In addition to listing these specific categories of individuals, the rule would clarify that a reviewing court has discretion to use this technique to protect the identity of persons in other circumstances in which personal privacy interests support not using the person’s full name.

To better highlight existing requirements for protecting the privacy of social security and financial account numbers in filed documents, the Appellate Advisory Committee also proposes adopting new rule 8.41 to cross-reference these requirements, which appear in title 1 of the California Rules of Court, and moving these existing requirements from rule 1.20(b) to new rule 1.201 (Protection of privacy). Because *Confidential Reference List of Identifiers* (form MC-120) includes two references to rule 1.20(b), the advisory

*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.*

committee recommends a technical change to that form to substitute the new rule number.

## **Background**

Current rule 8.401 protects the anonymity of juveniles involved in juvenile proceedings in the appellate courts. The rule requires that in documents filed in such proceedings, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used. (Cal. Rules of Court, rule 8.401(a)(1).) Concerning appellate opinions, the rule provides as follows:

In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used. (Cal. Rules of Court, rule 8.401(a)(2).)

The California Style Manual also addresses protective nondisclosure of the identity of juveniles and victims of sex crimes in appellate opinions. Section 5:9, part of the chapter on editorial polices followed in official reports, provides, in relevant part:

The Supreme Court has issued the following policy statement to all appellate courts: “To prevent the publication of damaging disclosures concerning living victims of sex crimes and minors innocently involved in appellate court proceedings it is requested that the names of these persons be omitted from all appellate court opinions whenever their best interests would be served by anonymity.  
Cal. Style Manual, § 5:9

Because these current provisions focus on only certain types of individuals and information—juveniles, victims of sex crimes, and social security and financial account numbers—appellate opinions may include other information that raises privacy concerns. Many individuals whose names and personal information appear in appellate court opinions have contacted Judicial Council staff with concerns about their privacy and requests to “remove” the opinions or redact their names or other information. Many of these individuals have expressed concern about the effect of information in the opinions on their current or future employment.

Privacy interests have also been recently addressed by the new rules presented in article 6 (Public Access to Electronic Appellate Court Records; rule 8.80 et seq.). The statement of

purpose for these rules provides: “The rules in this article are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests.” (Cal. Rules of Court, rule 8.80(a).) A “record” includes “any . . . opinion of the court.” (Cal. Rules of Court, rule 8.82(1).) Except for the docket, calendar, and opinion, in 10 categories of cases there is to be no remote access to electronic records. (Cal. Rules of Court, rule 8.83(c)(2).) Remote access can be authorized in “extraordinary” cases by the presiding justice (Cal. Rules of Court, rule 8.83(d)), but when this access is authorized, specified identifying information must be redacted from the records. (Cal. Rules of Court, rule 8.83(d)(2).) The Advisory Committee Comment for rule 8.83 states: “The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.”

The proposed rules are consistent with the balanced approach taken in the new rules on access to appellate court electronic records.

Finally, rule 1.20, which is applicable to all courts, contains provisions designed to protect the privacy of social security numbers and financial account numbers. Subdivision (b) of this rule generally requires parties and attorneys to leave out or redact these numbers from all filings.<sup>1</sup> Subdivision(b)(4) provides that, on a showing of good cause, a court may order a party filing a document containing redacted identifying numbers to file, along with the redacted document, a confidential reference list that shows the complete identifying number and the corresponding reference or abbreviation for each number, using *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The proposal would move rule 1.20(b) to a separate location in title 1 and provide a cross-reference to it in the appellate rules.

## **The Proposal**

### **Rule 8.90**

The committee proposes a new rule designed to protect the identity of certain categories of individuals when they are parties or referred to in appellate opinions and to confirm that a reviewing court has discretion to refer to these individuals by first name and last initial or by initials only. Proposed new rule 8.90 lists categories of individuals in proceedings in which new rule 8.83 limits electronic access to records. Rule 8.83 does not permit remote electronic access to records (other than records such as opinions, calendars, dockets, and indexes) in criminal cases, juvenile court cases, family law cases, mental health proceedings, and other specified proceedings. Public access to these electronic appellate court records is available at the courthouse only. (Cal Rules of Court,

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<sup>1</sup> If a social security number or financial account number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used. (Cal. Rules of Court, rule 1.20(b)(1) and (2).)

rule 8.83(c)(2).) The advisory committee believes that the same privacy considerations that limit remote access to records in these proceedings support privacy protections to specified categories of individuals in these proceedings when they are referred to in appellate court opinions. Proposed new rule 8.90(b) would therefore clarify that it is within the discretion of the reviewing court to refer to by first name and last initial—or, if the first name is unusual or other circumstances would defeat the objective of privacy interests, by initials only—the individuals whose privacy interests are at risk in these proceedings, such as victims in criminal cases, wards in guardianship proceedings, and patients in mental health proceedings.

### **Rules 1.20, 1.201, and 8.41**

As noted above, current rule 1.20(b) requires redacting or excluding social security numbers and financial account numbers in filed documents. The committee is concerned, however, that because of the current location of this provision, many people who file documents that include social security numbers or financial account numbers may be unaware of these requirements. Furthermore, rule 1.20 is entitled “Filing” and in a chapter entitled “Service and Filing,” which may not alert rule users to the requirements relating to privacy protection.

This proposal would move the content of rule 1.20(b), with minor, nonsubstantive changes, to new rule 1.201.<sup>2</sup> The new rule would be entitled “Protection of privacy” (the same as the subdivision heading of current 1.20(b)), which should make the requirements easier for rule users to locate. In addition, it would be moved to chapter 7, Form and Format of Papers, where users would be more likely notice the requirements for redacting this information from papers. The committee also proposes new rule 8.41 to cross-reference to rule 1.201 in order to make its provisions more apparent to those filing documents in appellate courts.

In addition, a technical change would be made to the form that filers use, if ordered by the court to file a confidential reference list of identifiers for each redacted identifier. Form MC-120 would be revised to replace the reference to rule 1.20(b) with new rule 1.201. Current form MC-120 is designed to be filed in superior court, even though rule 1.20 applies to all courts and provides that a court, on a showing of good cause, may order a party filing documents containing the specified identifiers to file a confidential reference list using form MC-120. The committee is interested in comments about whether the form should be revised for use in appellate courts also or a separate, new form should be adopted for use in appellate courts.

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<sup>2</sup> The subdivision titled “Scope” would be moved to the end of rule 1.201 and shortened slightly without changing its meaning.

## Alternatives Considered

The advisory committee discussed other means to increase privacy protections of individuals who are named in appellate court opinions and to protect other sensitive information. The committee is in the process of considering whether there are technological means to reduce the likelihood that a simple internet search of a person's name will return an appellate opinion in which the person is mentioned. The advisory committee is also considering whether to recommend additional education for appellate justices and appellate judicial staff attorneys about ways to minimize the use of names in opinions to protect privacy, where appropriate and possible to do so. The committee's view is that the proposed rule amendments and these potential additional approaches would be complementary, rather than mutually exclusive.

## Implementation Requirements, Costs, and Operational Impacts

The proposal would require judicial, court staff, and attorney training in expanding the use of first names and initials or referring to an individual's status—instead of a victim's or witness's name—when writing briefs and appellate opinions.

### 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?
- Is there a need for form MC-120 or a similar form to be filed in appellate courts?

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?

## Attachments and Links

1. Cal. Rules of Court, rules 1.20, 1.201, 8.41, and 8.90, at pages 6–9
2. Form MC-120, at page 10

Rules 1.201, 8.41, and 8.90 of the California Rules of Court would be adopted and rule 1.20 would be amended, effective January 1, 2017, to read:

1 **Rule 1.20. Effective Date of Filing**

2  
3 **(a) ~~Effective date of filing~~**

4  
5 Unless otherwise provided, a document is deemed filed on the date it is received by  
6 the court clerk.

7  
8 **~~(b) Protection of privacy~~**

9  
10 ~~(1) — *Scope*~~

11  
12 ~~The requirements of this subdivision that parties or their attorneys must not~~  
13 ~~include, or must redact, certain identifiers from documents or records filed~~  
14 ~~with the court do not apply to documents or records that by court order or~~  
15 ~~operation of law are filed in their entirety either confidentially or under seal.~~

16  
17 ~~(2) — *Exclusion or redaction of identifiers*~~

18  
19 ~~To protect personal privacy and other legitimate interests, parties and their~~  
20 ~~attorneys must not include, or must redact where inclusion is necessary, the~~  
21 ~~following identifiers from all pleadings and other papers filed in the court's~~  
22 ~~public file, whether filed in paper or electronic form, unless otherwise~~  
23 ~~provided by law or ordered by the court:~~

24  
25 ~~(A) — Social security numbers. If an individual's social security number is~~  
26 ~~required in a pleading or other paper filed in the public file, only the~~  
27 ~~last four digits of that number may be used.~~

28  
29 ~~(B) — Financial account numbers. If financial account numbers are required~~  
30 ~~in a pleading or other paper filed in the public file, only the last four~~  
31 ~~digits of these numbers may be used.~~

32  
33 ~~(3) — *Responsibility of the filer*~~

34  
35 ~~The responsibility for excluding or redacting identifiers identified in (b)(2)~~  
36 ~~from all documents filed with the court rests solely with the parties and their~~  
37 ~~attorneys. The court clerk will not review each pleading or other paper for~~  
38 ~~compliance with this provision.~~

39  
40 ~~(4) — *Confidential reference list*~~

41  
42 ~~If the court orders on a showing of good cause, a party filing a document~~  
43 ~~containing identifiers listed in (b)(2) may file, along with the redacted~~  
44 ~~document that will be placed in the public file, a reference list. The~~

1 reference list is confidential. A party filing a confidential reference list must  
2 use ~~Confidential Reference List of Identifiers~~ (form MC-120) for that  
3 purpose. The confidential list must identify each item of redacted  
4 information and specify an appropriate reference that uniquely corresponds  
5 to each item of redacted information listed. All references in the case to the  
6 redacted identifiers included in the confidential reference list will be  
7 understood to refer to the corresponding complete identifier. A party may  
8 amend its reference list as of right.

9  
10  
11 **Rule 1.201. Protection of privacy**

12  
13 **(a) Exclusion or redaction of identifiers**

14  
15 To protect personal privacy and other legitimate interests, parties and their  
16 attorneys must not include, or must redact where inclusion is necessary, the  
17 following identifiers from all pleadings and other papers filed in the court's public  
18 file, whether filed in paper or electronic form, unless otherwise provided by law or  
19 ordered by the court:

- 20  
21 (1) Social security numbers. If an individual's social security number is required  
22 in a pleading or other paper filed in the public file, only the last four digits of  
23 that number may be used.  
24  
25 (2) Financial account numbers. If financial account numbers are required in a  
26 pleading or other paper filed in the public file, only the last four digits of  
27 these numbers may be used.

28  
29 **(b) Responsibility of the filer**

30  
31 The responsibility for excluding or redacting identifiers identified in (a) from all  
32 documents filed with the court rests solely with the parties and their attorneys.  
33 The court clerk will not review each pleading or other paper for compliance with  
34 this provision.

35  
36 **(c) Confidential reference list**

37  
38 If the court orders on a showing of good cause, a party filing a document  
39 containing identifiers listed in (a) may file, along with the redacted document that  
40 will be placed in the public file, a reference list. The reference list is confidential.  
41 A party filing a confidential reference list must use *Confidential Reference List of*  
42 *Identifiers* (form MC-120) for that purpose. The confidential list must identify  
43 each item of redacted information and specify an appropriate reference that

1 uniquely corresponds to each item of redacted information listed. All references in  
2 the case to the redacted identifiers included in the confidential reference list will be  
3 understood to refer to the corresponding complete identifier. A party may amend  
4 its reference list as of right.

5  
6 **(d) Scope**

7  
8 The requirements of this rule do not apply to documents or records that by court  
9 order or operation of law are filed in their entirety either confidentially or under  
10 seal.

11  
12  
13 **Article 2. Service, Filing, Filing Fees, Form, and ~~Number of~~**  
14 **Documents-Privacy**

15  
16 **Rule 8.41. Protection of privacy in documents and records**

17  
18 The provisions on protection of privacy in rule 1.201 apply to documents and records  
19 under these rules.

20  
21  
22 **Article 7. Privacy**

23  
24 **Rule 8.90. Privacy in opinions**

25  
26 **(a) Application**

27  
28 This rule provides guidance on the use of names in appellate court opinions.  
29 Where other laws establish specific requirements for protecting privacy that differ  
30 from the provisions in this rule, those specific requirements supersede the  
31 provisions in this rule.

32  
33 **(b) Persons protected**

34  
35 To protect personal privacy interests, in all opinions, it is within the discretion of  
36 the reviewing court to refer to by first name and last initial—or, if the first name  
37 is unusual or other circumstances would defeat these objectives, by initials only—  
38 the following:

39  
40 (1) Children in all proceedings under the Family Code and protected persons in  
41 domestic violence–prevention proceedings;

42  
43 (2) Juveniles in juvenile court proceedings;



**CONFIDENTIAL**

**MC-120**

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): _____	<i>FOR COURT USE ONLY</i>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
<b>CONFIDENTIAL REFERENCE LIST OF IDENTIFIERS</b> <input type="checkbox"/> _____ <b>AMENDED</b>	CASE NUMBER:
<b>TO COURT CLERK: THIS LIST IS CONFIDENTIAL</b>	

**INSTRUCTIONS FOR FILER**

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, social security numbers and financial account numbers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court. (Cal. Rules of Court, rule 1.201.) If the court orders on a showing of good cause, a party may file, along with the redacted pleading or paper that will be placed in the public file, this *Confidential Reference List of Identifiers*. The list must identify each identifier that has been redacted from the pleading or paper in the public file and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references included in the list will be understood to refer to the corresponding complete identifier. Additional pages may be attached to this form as necessary.

**REFERENCE LIST**

	<b>COMPLETE IDENTIFIER</b> <i>Use this column to list the social security and financial account numbers that have been redacted from the document that is to be placed in the public file.</i>	<b>CORRESPONDING REFERENCE</b> <i>Use this column to list the reference or abbreviation that will refer to the corresponding complete identifier.</i>	<b>LOCATION</b> <i>Use this column to identify the document or documents where the reference appears in place of the identifier.</i>
1.			
2.			
3.			
4.			
5.			
6.			

Additional pages are attached. Number of pages attached: \_\_\_\_\_

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Juvenile Proceedings

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov), 415-865-7691

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Item 5 - Record on appeal in juvenile cases - Consider whether to recommend amendments to the rules regarding the record on appeal in juvenile cases to clarify requirements for inclusion of items relating to Indian Child Welfare Act compliance.

Item 7 - Application of rules on juvenile appeals - Consider whether to recommend amendment to the rules on juvenile appeals to clarify that they apply to appeals under Probate Code 1516.5

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

**SPR16-\_\_**

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Title	Action Requested
Appellate Procedure: Juvenile Proceedings	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 8.400 and 8.407	January 1, 2017
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson,
Hon. Raymond J. Ikola, Chair	heather.anderson@jud.ca.gov, 415-865-7691

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### **Executive Summary and Origin**

To save time and costs for courts associated with requests to augment or receive copies of the record on appeal and the costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts when such requests are granted, the Appellate Advisory Committee is proposing to amend: (1) the rule that identifies the proceedings governed by the juvenile appellate rules to clarify that these rules apply to appeals of orders terminating parental rights under Probate Code 1516.5; and (2) the rule that lists what must be included in the normal record in juvenile appeals to clarify that the clerk's transcript must include various notices under the Indian Child Welfare Act and to add hearings at which certain advisements are to be given to the hearings that must be included in the reporter's transcript. This proposal originated from a suggestion submitted by an attorney at one of the appellate projects that assist the Court of Appeal with appointed counsel in juvenile appeals.

### **Rule 8.400**

#### **Background**

Chapter 5 of Title 8, Division 1 of the California Rules of Court, which is entitled "Juvenile Appeals and Writs," sets out the procedures for appeals and writ proceedings in juvenile delinquency and dependency proceedings and certain other similar proceedings. Rule 8.400 identifies the proceedings that are governed by Chapter 5. Currently, the proceedings listed in rule 8.400 include appeals from judgments or appealable orders in actions to free a child from parental custody and control under Family Code section 7800 et seq..

*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.*

The rules in Chapter 5 differ from the rules governing other civil appeals in several important ways. Among other things, these rules specify the contents of the record on appeal, rather than requiring parties to designate the items to be included in the record, and do not include procedures for charging advance fees to parties for their copy of the record. This structure reflects statutory provisions that provide for preparing and transmitting the record without the advance payment of fees in proceedings under the Welfare and Institutions Code and under Family Code section 7800 et seq. (see Welfare and Institutions Code section 395(a)(4) and Family Code section 7895(c)).

Like proceedings under Family Code section 7800 et seq., Probate Code section 1516.5 pertains to the termination of parental rights, but in the context of a probate guardianship. Section 1516.5 specifically provides that these probate proceedings may be brought in accordance with the procedures set out in Family Code section 7800 et seq.. Currently, however, rule 8.400 does not identify appeals in proceedings under Probate Code section 1516.5 as being among the proceedings governed by the juvenile appellate rules. This has caused confusion in some appeals about whether the record should be prepared and sent to counsel without the necessity of filing a designation or the advance payment of fees. As a result appellate counsel have had to prepare and file requests to have the record prepared, resulting in delay and additional costs to the courts.

### **The Proposal**

To eliminate confusion about the record preparation process in these cases and the delay and costs associated with requests for preparation of the record, the committee is proposing that rule 8.400 be amended to also include appeals under Probate Code 1516.5 among the proceedings governed by the juvenile appellate rules.

### **Rule 8.407**

#### **Background**

Rule 8.407 sets out the content of the normal record in juvenile appeals. Subdivision (a)(4) of this rule currently requires that the clerk's transcript in these appeals include, among other things, "[an]y report or other document submitted to the court." Subdivision (b) requires that the reporter's transcript in juvenile appeals generally include the oral proceedings at any hearing that resulted in the order or judgment being appealed, but that in appeals from dispositional orders, it include the oral proceedings at the hearings on jurisdiction and disposition and any motion by the appellant that was denied in whole or in part. Under current rule 8.407(c), any party or Indian tribe that has intervened in the proceedings may apply to the superior court for inclusion of additional oral proceedings in the reporter's transcript. Under rule 8.410, either on the motion of a party or its own motion, the Court of Appeal can also order that additional items be included in the record on appeal.

Under the Indian Child Welfare Act (ICWA) (25 U.S.C. Sec. 1901 et seq.) and related California law (see Welfare and Institutions Code sections 224 et seq. and California Rules of Court, rules

5.481 et seq.), in juvenile proceedings, the trial court has an affirmative and continuing duty to inquire whether a child for whom a juvenile petition is to be, or has been, filed is or may be an Indian child and if the court knows or has reason to know that an Indian child is involved, notices must be sent to, among others, the child's Indian custodian, if any, and the child's tribe (see Welfare and Institutions Code sections 224.2 and 224.3). The failure to comply with ICWA inquiry and notice requirements can be the basis for seeking to invalidate the trial court decision.

In the experience of committee members, the normal record on appeal in juvenile dependency cases may not always include all of the written documents or transcripts of the hearings that are needed to determine whether there was appropriate compliance with these ICWA inquiry and notice requirements. The Fourth Appellate District has a local order that requires that reporter's transcripts in dependency appeals include additional hearings, such as the detention hearing. In other Court of Appeal districts, if additional items are needed in the record, they must be requested either through an application to the superior court under rule 8.407(c) or through a motion to augment under rule 8.410. However, it takes additional time and resources for counsel to prepare and for the courts to consider such applications and motions. For those parties who are represented by appointed counsel, the time spent by counsel on such requests or motions constitutes an additional cost for the Court of Appeal. Furthermore, if the superior court or Court of Appeal routinely grant these applications or motions, it does not save trial courts any record preparation costs not to have included these hearings in the original reporter's transcript. In fact, it may actually cost trial courts more to separately prepare and transmit to the reviewing court supplemental reporter's transcripts at a later time.

### **The Proposal**

To reduce the delay and costs associated with augmentation requests, the committee is proposing that rule 8.407(b), which identifies the hearings that must be included in the reporter's transcript as part of the normal record in juvenile appeals, be amended to require that, in juvenile dependency appeals, the following also be included in the reporter's transcript:

- The detention hearing; and
- The hearing(s) at which the child's parent(s) first appeared.

The particular hearings have been identified as those at which ICWA inquiries are likely to be conducted, and thus it is the committee's understanding that transcripts of these hearing are likely to be routinely needed in dependency appeals.

The committee is also proposing two amendments to provide clarifications about materials that should already be included in the normal record in juvenile appeals:

- Amending rule 8.407(b) to clarify that in appeals from an order terminating parental rights under Welfare and Institutions Code sections 300 et. seq., the reporter's transcript must include all section 366.26 hearings;
- Amending the advisory committee comment to 8.407(a) to clarify that the clerk's transcript must include written ICWA notices submitted to the court.

## **Alternatives Considered**

The committee considered whether to also propose that rule 8.400 be amended to provide that appeals of actions under Family Code sections 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, are governed by the juvenile appellate rules. The committee decided not to include this amendment in this proposal because, unlike for proceedings under Probate Code section 1516.5, it was not clear whether the statutes contemplated that the record in these proceedings would be prepared and transmitted without the advance payment of fees. However, the committee would appreciate comments on whether appeals of actions under Family Code sections 7662–7666 should be governed by the juvenile appellate rules.

The committee also considered whether it would be preferable not to propose any amendments to rule 8.407 to add items to the normal record in juvenile appeals, but instead to leave it to each appellate district to determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district. Some members of the committee thought that a local rule approach would be preferable because only those districts that felt the need to require additional items would do so. While the majority of members thought a statewide rule was preferable because it would be less confusing and more efficient for appellate counsel, the committee would appreciate comments on the relative merits of the statewide rule and local rule approaches to this topic.

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

This proposal will require changes in current procedures relating to what material is included in the reporter's transcripts in juvenile dependency cases and, in some courts, relating to the preparation of the record in appeals of orders terminating parental rights under Probate Code 1516.5. This is likely to require some additional training for court clerks and court reporters. However, as indicated above, the intent of this proposal is to reduce overall costs and increase efficiency by:

- Reducing Court of Appeal expenses for appointed counsel in juvenile dependency cases associated with preparing motions to augment;
- Reducing costs for the trial courts and Courts of Appeal in considering requests to prepare the record and motions to augment the record; and
- Reducing trial court costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts.

## 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?
- Should appeals of actions under Family Code section 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, also be added to the list of proceedings governed by the juvenile appellate rules?
- Are transcripts of the detention hearing and of the hearing at which a child’s parent(s) first appear routinely needed in the substantial majority of the juvenile dependency appeals? (While automatically including transcripts of these hearings in the record will reduce costs if routinely needed for appellate review in these cases, it may increase costs if they are not needed.)
- Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?

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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### Attachment

Cal. Rules of Court, rules 8.400 and 8.407, at pages 6–9

Rules 8.400 and 8.407 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1  
2 **Title 8. Appellate Rules**  
3

4 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**  
5

6 **Chapter 5. Juvenile Appeals and Writs**  
7

8 **Article 1. General provisions**  
9

10 **Rule 8.400. Application**  
11

12 The rules in this chapter govern:  
13

- 14 (1) Appeals from judgments or appealable orders in:  
15  
16 (A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and  
17  
18 (B) Actions to free a child from parental custody and control under Family Code section  
19 7800 et seq. and Probate Code section 1516.5; and  
20  
21 (2) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.  
22  
23

24 **Article 2. Appeals**  
25

26 **Rule 8.407. Record on appeal**  
27

28 **(a) Normal record: clerk's transcript**  
29

30 The clerk's transcript must contain:  
31

- 32 (1) The petition;  
33  
34 (2) Any notice of hearing;  
35  
36 (3) All court minutes;  
37  
38 (4) Any report or other document submitted to the court;  
39  
40 (5) The jurisdictional and dispositional findings and orders;  
41  
42 (6) The judgment or order appealed from;  
43

Rules 8.400 and 8.407 of the California Rules of Court would be amended, effective January 1, 2017, to read:

- 1 (7) Any application for rehearing;
- 2
- 3 (8) The notice of appeal and any order pursuant to the notice;
- 4
- 5 (9) Any transcript of a sound or sound-and-video recording tendered to the court under
- 6 rule 2.1040;
- 7
- 8 (10) Any application for additional record and any order on the application;
- 9
- 10 (11) Any opinion or dispositive order of a reviewing court in the same case and;
- 11
- 12 (12) Any written motion or notice of motion by any party, with supporting and opposing
- 13 memoranda and attachments, and any written opinion of the court.
- 14

15 **(b) Normal record: reporter's transcript**

16 The reporter's transcript must contain:

- 17
- 18
- 19 (1) Except as provided in ~~(2)-(3)~~, the oral proceedings at any hearing that resulted in the
- 20 order or judgment being appealed;
- 21
- 22 (2) In appeals from dispositional orders, the oral proceedings at hearings on:
- 23
- 24 (A) Detention and at which a parent of the child made his or her initial appearance
- 25 in cases under Welfare and Institutions Code sections 300 et seq.;
- 26
- 27 ~~(A)(B)~~ Jurisdiction and disposition; and
- 28
- 29 ~~(B)(C)~~ Any motion by the appellant that was denied in whole or in part; ~~and~~
- 30
- 31 (3) The oral proceedings at all section 366.26 hearings in appeals from an order
- 32 terminating parental rights under Welfare and Institutions Code sections 300 et seq.;
- 33 and
- 34
- 35 ~~(3)(4)~~ Any oral opinion of the court.
- 36

37 **(c) Application in superior court for addition to normal record**

- 38
- 39 (1) Any party or Indian tribe that has intervened in the proceedings may apply to the
- 40 superior court for inclusion of any oral proceedings in the reporter's transcript.
- 41
- 42 (2) An application for additional record must describe the material to be included and
- 43 explain how it may be useful in the appeal.
- 44

Rules 8.400 and 8.407 of the California Rules of Court would be amended, effective January 1, 2017, to read:

- 1 (3) The application must be filed in the superior court with the notice of appeal or as  
2 soon thereafter as possible, and will be treated as denied if it is filed after the record  
3 is sent to the reviewing court.
- 4
- 5 (4) The clerk must immediately present the application to the trial judge.
- 6
- 7 (5) Within five days after the application is filed, the judge must order that the record  
8 include as much of the additional material as the judge finds proper to fully present  
9 the points raised by the applicant. Denial of the application does not preclude a  
10 motion in the reviewing court for augmentation under rule 8.155.
- 11
- 12 (6) If the judge does not rule on the application within the time prescribed by (5), the  
13 requested material—other than exhibits—must be included in the clerk’s transcript or  
14 the reporter’s transcript without a court order.
- 15
- 16 (7) The clerk must immediately notify the reporter if additions to the reporter’s  
17 transcript are required under (5) or (6).
- 18

19 **(d) Agreed or settled statement**

20  
21 To proceed by agreed or settled statement, the parties must comply with rule 8.344 or  
22 8.346, as applicable.

23  
24 **(e) Transmitting exhibits**

25  
26 Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the  
27 reviewing court as provided in rule 8.224.

28  
29 **Advisory Committee Comment**

30  
31 Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included  
32 in the record on appeal. Examples of confidential records include records of proceedings closed to  
33 inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a  
34 confidential informant.

35  
36 **Subdivision (a)(4).** The documents that must be included in the clerk’s transcript under this provision  
37 include all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry*  
38 *Attachment* [form ICWA-010(A)], any *Parental Notification of Indian Status* (form ICWA-020), any  
39 *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent to an Indian tribe, any  
40 signed return receipts for the mailing of form ICWA-030, and any responses to form ICWA-030 from an  
41 Indian Tribe.

42  
43 **Subdivision (b).** Subdivision (b)(1) provides that only the reporter’s transcript of a hearing that resulted  
44 in the order being appealed must be included in the normal record. This provision is intended to achieve  
45 consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300,  
46 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the  
47 appeal.

Rules 8.400 and 8.407 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 Subdivision (b)(2)(~~A~~)(B) recognizes that findings made in a jurisdictional hearing are not separately  
2 appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule  
3 therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included  
4 in the normal record on appeal from a dispositional order.

5  
6 Subdivision (b)(2)(~~B~~)(C) specifies that the oral proceedings on any motion by the appellant that was  
7 denied in whole or in part must be included in the normal record on appeal from a disposition order.  
8 Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent  
9 disposition order. Routine inclusion of these proceedings in the record will promote expeditious  
10 resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

11  
12

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Transcripts of Marsden Hearings

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov), 415-865-7691

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Item 10 - Marsden transcripts – Consider whether to recommend a rule amendment to clarify requirement to provide copy of Marsden transcript to defendant's appellate counsel or, if not yet appointed, the district appellate project

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

SPR16-\_\_

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Title	Action Requested
Appellate Procedure: Transcripts of <i>Marsden</i> Hearings	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend advisory committee comment to Cal. Rules of Court, rule 8.45	January 1, 2017
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

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### Executive Summary and Origin

Based on a suggestion received from the Assistant Clerk/Administrator of a Court of Appeal, the Appellate Advisory Committee is proposing to amend the advisory committee comment accompanying the rule that addresses transmission of confidential records to clarify that a copy of the confidential transcript of any in-camera hearings conducted by the superior court under *People v. Marsden* (1970) 2 Cal.3d 118 must be transmitted to defendant's appellate counsel or, if not yet appointed, the district appellate project.

### Background

Prior January 1, 2014, there was a specific rule, rule 8.328, that addressed the handling of the confidential reporter's transcripts of in-camera hearings conducted by the superior court under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden* transcripts). Among other things, this rule provided that the superior court clerk was required to send one copy of the *Marsden* transcript to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

Effective January 1, 2014, the appellate rules relating to sealed and confidential records were amended. Rule 8.328 was repealed and replaced with rules 8.45 – 8.47, which address sealed and confidential records in general. These amendments were not intended to change the practice of sending a copy of any *Marsden* transcripts to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

*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.*

Transmission of confidential transcripts is now addressed in rule 8.45, which generally addresses access to and transmission of sealed and confidential records. Rule 8.45(d)(2) provides that a reporter's transcript or any document related to any in-camera hearing from which a party was excluded in the trial court, such as a *Marsden* hearing, must be transmitted to the reviewing court and to the party or parties who participated in the in-camera hearing. The term "party" includes any attorney of record for that party and, thus, when a party who participated in an in-camera hearing, such as defendant in a *Marsden* hearing, is represented by appellate counsel, the confidential transcript of that hearing must be transmitted to that party's appellate counsel. Rule 8.336(g), which was not substantively modified in 2014, also provides that one copy of the reporter's transcript in a felony appeal must be sent to appellate counsel for each defendant represented by separate counsel and that if the defendant is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that defendant's counsel's copy of the transcripts to the district appellate project.

### **The Proposal**

The committee understands that, despite there being no intent to change the existing practice, the repeal of former rule 8.328 has resulted in some confusion about whether a copy of any *Marsden* transcripts must be sent to the defendant's appellate counsel. In some cases, this confusion has resulted in appellate counsel having to file a motion to obtain the necessary copy of a *Marsden* transcript. To eliminate any confusion about this, the committee is proposing an amendment to the advisory committee comment accompanying rule 8.45 addressing subdivision (d) and clarifying the continuing requirement to send a copy of any *Marsden* transcripts to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

The committee is also proposing a few non-substantive changes to the comment regarding 8.45(c) and (d) that would correct a cross-referencing error, provide a more specific citation to another rule provision, and clarify that a reference to "transcripts" encompasses both clerk's and reporter's transcripts.

### **Alternatives Considered**

The committee considered whether to propose an amendment to rule 8.47 to add language specifically requiring the superior court clerk to send one copy of a *Marsden* transcript to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district. Ultimately, the committee decided not to propose such an amendment because rule 8.45 already requires this same result. The committee was concerned that adding another provision separately addressing *Marsden* transcripts could result in rule 8.45 being interpreted in a way that is not consistent with the original intent. However, the committee would appreciate input on whether such an amendment to rule 8.47 would be preferable to the proposed amendment to the advisory committee comment accompanying rule 8.45.

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

This proposal should not impose significant implementation requirements on the courts and should result in decreased costs associated with motions by counsel to receive a copy of any *Marsden* transcripts.

### **Request for Specific Comments**

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

- Whether the proposal appropriately addresses the stated purpose.
- Whether it would be preferable to amend rule 8.47 to add language specifically requiring the superior court clerk to send one copy of a *Marsden* transcript to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel.

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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

## **Attachment**

Cal. Rules of Court, rule 8.45, at pages 4–5

The advisory committee comment to Rule 8.45 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1  
2 **Title 8. Appellate Rules**  
3

4 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**  
5

6 **Chapter 1. General Provisions**  
7

8 **Article 3. Sealed and Confidential Records**  
9

10  
11 **Rule 8.45. General provisions**  
12

13 **(a) Application \* \* \***  
14

15 **(b) Definitions \* \* \***  
16

17 **(c) Format of sealed and confidential records \* \* \***  
18

19 **(d) Transmission of and access to sealed and confidential records**  
20

- 21 (1) Unless otherwise provided by (2)–(4) or other law or court order, a sealed or  
22 confidential record that is part of the record on appeal or the supporting documents  
23 or other records accompanying a motion, petition for a writ of habeas corpus, other  
24 writ petition, or other filing in the reviewing court must be transmitted only to the  
25 reviewing court and the party or parties who had access to the record in the trial  
26 court or other proceedings under review and may be examined only by the reviewing  
27 court and that party or parties. If a party’s attorney but not the party had access to the  
28 record in the trial court or other proceedings under review, only the party’s attorney  
29 may examine the record.  
30
- 31 (2) Except as provided in (3), if the record is a reporter’s transcript or any document  
32 related to any in-camera hearing from which a party was excluded in the trial court,  
33 the record must be transmitted to and examined by only the reviewing court and the  
34 party or parties who participated in the in-camera hearing.  
35
- 36 (3) A reporter’s transcript or any document related to an in-camera hearing concerning a  
37 confidential informant under Evidence Code sections 1041–1042 must be transmitted  
38 only to the reviewing court.  
39
- 40 (4) A probation report must be transmitted only to the reviewing court and to appellate  
41 counsel for the People and the defendant who was the subject of the report.

The advisory committee comment to Rule 8.45 of the California Rules of Court would be amended, effective January 1, 2017, to read:

**Advisory Committee Comment**

**Subdivision (a).** \* \* \*

**Subdivision (b)(5).** \* \* \*

**Subdivisions (c) and (d).** The requirements in this rule for format and transmission of and access to sealed and confidential records apply only unless otherwise provided by law. Special requirements that govern transmission of and/or access to particular types of records may supersede the requirements in this rule. For example, rules 8.619(g) and 8.622(e) require copies of reporters' transcripts in capital cases to be sent to the Habeas Corpus Resource Center and the California Appellate Project in San Francisco, and under rules 8.336 ~~(d)~~(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

**Subdivision (c)(1)(C).** \* \* \*

**Subdivision (c)(2).** \* \* \*

**Subdivision (c)(3).** \* \* \*

**Subdivision (d).** See rule 8.47(b) for special requirements concerning access to certain confidential records.

**Subdivision (d)(1) and (2).**

Because the term "party" includes any attorney of record for that party, under rule 8.10 (3), when a party who had access to a record in the trial court or other proceedings under review or who participated in an in-camera hearing—such as defendant in a *Marsden* hearing—is represented by appellate counsel, the confidential record or transcript must be transmitted to that party's appellate counsel.

. Under rules 8.336(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts, including confidential records such as transcripts of *Marsden* hearings, to the district appellate project.

**Subdivision (d)(4).** \* \* \*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov), 415-865-7691

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Item 11 - Amicus Briefs – Consider whether to recommend amendments to rules on amicus briefs to address whether a party may file a response to an amicus supporting that party and whether to develop rules regarding amicus briefs in writ proceedings

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

SPR16-\_\_

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Title	Action Requested
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 8.487	January 1, 2017
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

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### Executive Summary and Origin

Based on suggestions received from an attorney, the Appellate Advisory Committee is proposing to amend the rules governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs.

### Background

Rules 8.200(c) and 8.520(f) address, respectively, applications to file amicus curiae briefs in appeals in the Court of Appeal and in cases in which the Supreme Court has granted review. Rule 8.487(f)(8) addresses amicus curiae briefs from the Attorney General in writ proceedings. Currently, however, there are no rules that specifically address the filing of amicus curiae briefs by any other person or entity in writ proceedings.

### The Proposal

To provide guidance about how to seek permission to file an amicus brief in writ proceedings, the Appellate Advisory committee is proposing amendments to rule 8.487 that add a new subdivision to address amicus curiae briefs by anyone other than the Attorney General. This provision is modeled on a combination of rules 8.200(c) and 8.520(f). The proposed new provision would only apply if the court issues an alternative writ or order to show cause. The amendment would require that the amicus application be filed no later than 14 days after the return is filed. This is the same timeframe within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed. It is also similar to the timeframe for filing an

*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.*

amicus application in the Court of Appeal under rule 8.200, but considerably shorter than the timeframe for filing such an application in the Supreme Court under rule 8.520.

### **Alternatives Considered**

The committee considered whether to propose rule provisions addressing the filing of amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show cause. It was noted that rule 8.500(g), relating to petitions to review in the Supreme Court, establishes such a procedure for filing an amicus letter to express support or opposition to a petition for review. The committee decided not to propose adding such a provision to the rules on writ proceedings, however. Committee members noted that the majority of writ petitions are summarily denied within a short period of time after filing. The committee was concerned about either delaying action in these cases or encouraging the preparation of amicus letters that are not helpful to the court's decision-making. It was also noted that the court may request such letters if it determines amicus participation would be helpful to its determination of whether to issue an alternative writ or order to show cause.

In addition, the committee discussed whether the rule should also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance (commonly known as a *Palma* notice). The committee decided not to propose that the rule address amicus participation when a *Palma* notice is issued because such notices are typically issued when the petitioner's right to relief is obvious or there is unusual urgency, making amicus participation unlikely to be helpful to the court's decision-making. The committee would, however, appreciate comments on whether the rule should address situations in which a *Palma* notice is issued.

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

This proposal should not impose significant implementation requirements on the courts because the proposed procedures mirror existing procedures for amicus applications in other contexts. The proposed rules should provide potential amicus curiae with guidance regarding applications to file amicus briefs in writ proceedings, which may reduce questions about how to do this and also ensure that the court has the information it needs to consider such applications.

## 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?
- Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance?

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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### Attachment

Cal. Rules of Court, rule 8.487, at pages 4–5

Rule 8.487 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1  
2 **Title 8. Appellate Rules**  
3

4 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**  
5

6 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**  
7 **Court of Appeal**  
8  
9

10 **Rule 8.487. Opposition and ~~Attorney General~~ amicus curiae briefs**  
11

12 **(a) Preliminary opposition \* \* \***  
13

14 **(b) Return or opposition; reply \* \* \***  
15

16 **(c) Supporting documents \* \* \***  
17

18 **(d) Attorney General's amicus curiae brief**  
19

20 (1) If the court issues an alternative writ or order to show cause, the Attorney General  
21 may file an amicus curiae brief without the permission of the Chief Justice or  
22 presiding justice, unless the brief is submitted on behalf of another state officer or  
23 agency.  
24

25 (2) The Attorney General must serve and file the brief within 14 days after the return is  
26 filed or, if no return is filed, within 14 days after the date it was due.  
27

28 (3) The brief must provide the information required by rule 8.200(c)(2) and comply with  
29 rule 8.200(c)(~~4~~)(5).  
30

31 (4) Any party may serve and file an answer within 14 days after the brief is filed.  
32

33 **(e) Other amicus curiae briefs**  
34

35 (1) If the court issues an alternative writ or order to show cause, any person or entity  
36 may serve and file an application for permission of the Chief Justice or presiding  
37 justice to file an amicus curiae brief.  
38

Rule 8.487 of the California Rules of Court would be amended, effective January 1, 2017, to read:

- 1           (2) The application must be filed no later than 14 days after the return is filed or, if no  
2           return is filed, within 14 days after the date it was due. For good cause, the Chief  
3           Justice or presiding justice may allow later filing.  
4
- 5           (3) The proposed brief must be served on all parties. It must accompany the  
6           application and may be combined with it.  
7
- 8           (4) The proposed brief must provide the information required by rule 8.200(c)(2) and (3)  
9           and comply with rule 8.200(c)(5).  
10
- 11          (5) If the court grants the application, any party may file either an answer to the  
12          individual amicus curiae brief or a consolidated answer to multiple amicus curiae  
13          briefs filed in the case. If the court does not specify a due date, the answer must be  
14          filed within 14 days after either the court rules on the last timely filed application to  
15          file an amicus curiae brief or the time for filing applications to file an amicus curiae  
16          brief expires, whichever is later. The answer must be served on all parties and the  
17          amicus curiae.  
18

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** 4/14/16

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend Cal. Rules of Court, rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee and Court Technology Advisory Committee

*Staff contact (name, phone and e-mail):* Katherine Sher, [katherine.sher@jud.ca.gov](mailto:katherine.sher@jud.ca.gov), 415-865-8031

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/10/15

Project description from annual agenda: Item 8 on AAC annual agenda - E-Filing rules - Review the rules on electronic filing in the appellate courts and compare with local practices to determine if there are inconsistencies that need to be addressed or where uniform practice might be beneficial.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend title 8 (Cal. Rules of Court, rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204)	January 1, 2017
Proposed by	Contact
Information Technology Advisory Committee	Katherine Sher, 415-865-8031 katherine.sher@jud.ca.gov
Hon. Terence L. Bruiniers, Chair	
Appellate Advisory Committee	
Hon. Raymond J. Ikola, Chair	

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### Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

### The Proposal

The existing appellate e-filing rules were created when e-filing was new to the appellate courts. Since their adoption, e-filing has been implemented in most of the appellate courts, and is mandatory in most cases in those courts. The rules, which treat appellate e-filing as a kind of pilot project, do not reflect the realities of appellate e-filing.

Moreover, as the appellate courts have implemented e-filing court by court, those courts implementing e-filing have looked to the courts where e-filing is already in use to determine how best to proceed. Thus in many areas, the practices and the local rules of the appellate courts regarding e-filing are similar or the same for the courts that have implemented e-filing programs. In some areas, the local rule requirements are in actual conflict with existing rules of court; for example, the requirements as to how e-filed briefs are to be paginated.

*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.*

To provide for a beneficial consistency, the ITAC and the AAC have undertaken a review of the appellate rules to identify areas where the existing rules of court fail to reflect the existing e-filing and e-service practices of the appellate courts, or where the rules conflict with those practices. The committees propose a thorough revision of the appellate e-filing rules to align those rules with the e-filing practices of the appellate courts. The proposal would:

- Revise rule 8.70 to eliminate outdated references to e-filing “projects” in the appellate courts.
- Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.
- Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (See detailed description below of proposed renumbered rule 8.78.)
- Create new rule 8.71, implementing mandatory e-filing in the appellate courts. E-filing would be required of all parties in all cases, except where otherwise provided by rule of court, local rule, or court order. Self-represented parties would be exempt from e-filing requirements unless they agreed to e-file. Trial courts would be exempt from e-filing unless they agreed to e-file. Any party would be able to ask to be excused from mandatory e-filing upon a showing of undue hardship or significant prejudice. These changes conform to the practices and local rules of the appellate courts that have implemented e-filing.
- Delete rule 8.72, with some of its provisions moved into new rule 8.71.
- Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (See detailed description below of proposed renumbered rule 8.79.)
- Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.
- Renumber rule 8.75 as rule 8.73, and add a provision allowing a court to include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.
- Renumber rule 8.76 as rule 8.74, add a requirement that a court’s required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents. The new provisions are consistent with the requirements imposed by appellate courts that have implemented e-filing.
- Renumber rule 8.77 as rule 8.75.

- Renumber rule 8.78 as rule 8.76.
- Renumber rule 8.79 as rule 8.77 and change the provision regarding delayed delivery of a filing due to technical problems with the court’s electronic filing system. The proposed amended rule would provide that a filer who misses a deadline due to such technical problems may file the document as soon thereafter as practicable and move to have the document accepted as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was originally sought to be filed. The new provision is consistent with the practices and local rules of those Courts of Appeal that have implemented e-filing.
- Revise rule 8.78, renumbered from existing rule 8.71, so that electronic filing will no longer be considered consent to accept electronic service. Some parties may be able to file documents electronically but choose to receive service of documents in paper form. Existing provisions applying to electronic filing would be deleted, as electronic filing will now be addressed in rule 8.71. A provision is newly added to rule 8.78 providing that for purposes of the rule, the word “party” includes a nonparty that has agreed to or has been ordered to accept electronic service or to serve documents electronically. Rule 8.78(f) is revised to provide that when a document is electronically served the proof of service need not state that the server is not a party to the case, and to delete the requirement for the proof of service to state the time of service.
- Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, as electronic filing is proposed to become mandatory under proposed rule 8.71. Rule 8.79 is further revised to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service. Subdivision (a) (2) (B), prohibiting the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee, is proposed to be deleted.
- Amend rule 8.204 (b)(7) to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be omitted from the cover page. This is consistent with the proposed new rule for pagination of e-filed documents in the language added to proposed renumbered rule 8.74, and with the requirements of the local rules of the appellate courts. It ensures that page numbering of a PDF document is consistent with the page numbers shown on the document, which is not the case when, for example, Roman numerals are used for the table of contents and table of authorities.

### **Alternatives Considered**

The committees considered deferring action on the appellate e-filing rules until the appellate courts have had longer experience with e-filing. The committees determined that the experience of the appellate courts thus far has been adequate to support making the changes proposed;

further changes can be made as further experience is gained or as practices change. The revised rules will provide clear guidance to appellate litigants and put into the statewide rules the appellate e-filing practices that are in fact being used statewide.

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

Because the proposed changes are intended to make the rules consistent with existing e-filing practices in the appellate courts, ITAC and the AAC do not anticipate that the changes to the rules will incur new costs or require implementation on the part of the courts.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed rules consistent with current appellate e-filing practices and local rules?
- Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?
- Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.

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

- Are the proposed amended rules consistent with current appellate e-filing practices and local rules?
- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

Cal. Rules of Court, amendments to title 8, at pages 5–24.

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204 of the California Rules of Court would be amended, effective January 1, 2017, to read:

**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 1. General Provisions**

**Article 5. E-filing**

*Rule 8.70. ~~Purpose, a~~ Application, construction, and definitions*

*Rule 8.71. ~~Electronic service~~ filing*

*Rule 8.72. ~~Documents that may be filed electronically~~ Responsibilities of court*

*Rule 8.73. ~~Court order requiring electronic service or filing~~ Contracts with electronic filing service providers*

*Rule 8.74. ~~Responsibilities of court~~ Responsibilities of electronic filer*

*Rule 8.75. ~~Contracts with electronic filing service providers~~ Requirements for signatures on documents*

*Rule 8.76. ~~Responsibilities of electronic filer~~ Payment of filing fees*

*Rule 8.77. ~~Requirements for signatures on documents~~ Actions by court on receipt of electronic filing*

*Rule 8.78. ~~Payment of filing fees~~ Electronic service*

*Rule 8.79. ~~Actions by court on receipt of electronic filing~~ Court order requiring electronic service*

**Rule 8.70. Purpose, aApplication, construction, and definitions**

**(a) Purpose**

The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.

**(b)(a) Application**

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and any the Courts of Appeal that elects to implement an e-filing project.

**(e)(b) Construction**

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

**(d)(c) Definitions**

As used in this article, unless the context otherwise requires:

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- (1) “The court” means the Supreme Court or ~~any~~ a Court of Appeal ~~that elects to implement an e-filing project.~~
- (2) ~~A document may be in paper or electronic form.~~ A “document” is:
  - (A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;
  - (B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk’s or reporter’s transcript; or
  - (C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.
  - (D) A document may be in paper or electronic form.
- (3) “Electronic service” is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party’s attorney, through an electronic filing service provider, or by a court.
- (4) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
- (5) “Electronic notification” means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.
- (6) “Electronic service address” of a party means the electronic address at or through which the party has authorized electronic service.
- (7) An “electronic filer” is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.
- (8) “Electronic filing” is the electronic transmission to a court of a document in electronic form.
- (9) An “electronic filing service provider” is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

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## Advisory Committee Comment

The definition of “electronic service” has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

### **Rule 8.71. Electronic service**

#### **(a) — Authorization for electronic service**

~~(1) — A document may be electronically served under these rules:~~

~~(A) — If electronic service is provided for by law or court order; or~~

~~(B) — If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.~~

~~(2) — A party indicates that the party agrees to accept electronic service by:~~

~~(A) — Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or~~

~~(B) — Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~

~~(3) — A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.~~

~~(4) — A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

1  
2 **(b) — Maintenance of electronic service lists**

3  
4 ~~When the court orders or permits electronic filing in a case, it must maintain and~~  
5 ~~make available electronically to the parties an electronic service list that contains~~  
6 ~~the parties' current electronic service addresses, as provided by the parties that have~~  
7 ~~filed electronically in the case.~~

8  
9 **(c) — Service by the parties**

10  
11 ~~Notwithstanding (b), parties are responsible for electronic service on all other~~  
12 ~~parties in the case. A party may serve documents electronically directly, by an~~  
13 ~~agent, or through a designated electronic filing service provider.~~

14  
15 **(d) — Change of electronic service address**

16  
17 ~~(1) — A party whose electronic service address changes while the appeal or original~~  
18 ~~proceeding is pending must promptly file a notice of change of address~~  
19 ~~electronically with the court and must serve this notice electronically on all~~  
20 ~~other parties.~~

21  
22 ~~(2) — A party's election to contract with an electronic filing service provider to~~  
23 ~~electronically file and serve documents or to receive electronic service of~~  
24 ~~documents on the party's behalf does not relieve the party of its duties under~~  
25 ~~(1).~~

26  
27 ~~(3) — An electronic service address is presumed valid for a party if the party files~~  
28 ~~electronic documents with the court from that address and has not filed and~~  
29 ~~served notice that the address is no longer valid.~~

30  
31 **(e) — Reliability and integrity of documents served by electronic notification**

32  
33 ~~A party that serves a document by means of electronic notification must:~~

34  
35 ~~(1) — Ensure that the documents served can be viewed and downloaded using the~~  
36 ~~hyperlink provided;~~

37  
38 ~~(2) — Preserve the document served without any change, alteration, or modification~~  
39 ~~from the time the document is posted until the time the hyperlink is~~  
40 ~~terminated; and~~

41  
42 ~~(3) — Maintain the hyperlink until the case is final.~~

43  
44 **(f) — Proof of service**

1           (1) ~~Proof of electronic service may be by any of the methods provided in Code of~~  
2           ~~Civil Procedure section 1013a, except that the proof of service must state:~~

3  
4           (A) ~~The electronic service address of the person making the service, in~~  
5           ~~addition to that person's residence or business address;~~

6  
7           (B) ~~The date and time of the electronic service, instead of the date and~~  
8           ~~place of deposit in the mail;~~

9  
10          (C) ~~The name and electronic service address of the person served, in place~~  
11          ~~of that person's name and address as shown on the envelope; and~~

12  
13          (D) ~~That the document was served electronically, in place of the statement~~  
14          ~~that the envelope was sealed and deposited in the mail with postage~~  
15          ~~fully prepaid.~~

16  
17          (2) ~~Proof of electronic service may be in electronic form and may be filed~~  
18          ~~electronically with the court.~~

19  
20          (3) ~~The party filing the proof of electronic service must maintain the printed~~  
21          ~~form of the document bearing the declarant's original signature and must~~  
22          ~~make the document available for inspection and copying on the request of the~~  
23          ~~court or any party to the action or proceeding in which it is filed, in the~~  
24          ~~manner provided in rule 8.77(c).~~

25  
26          (g) **Electronic service by or on court**

27  
28          (1) ~~The court may electronically serve any notice, order, opinion, or other~~  
29          ~~document issued by the court in the same manner that parties may serve~~  
30          ~~documents by electronic service.~~

31  
32          (2) ~~A document may be electronically served on a court if the court consents to~~  
33          ~~electronic service or electronic service is otherwise provided for by law or~~  
34          ~~court order. A court indicates that it agrees to accept electronic service by:~~

35  
36          (A) ~~Serving a notice on all parties that the court accepts electronic service.~~  
37          ~~The notice must include the electronic service address at which the~~  
38          ~~court agrees to accept service; or~~

39  
40          (B) ~~Adopting a local rule stating that the court accepts electronic service.~~  
41          ~~The rule must indicate where to obtain the electronic service address at~~  
42          ~~which the court agrees to accept service.~~

43  
44          **Rule 8.71. Electronic filing**

1 **(a) Mandatory electronic filing**

2  
3 Except as otherwise provided by these rules, the local rules of the reviewing court,  
4 or court order, all parties are required to file all documents electronically in the  
5 reviewing court.

6  
7 **(b) Self-represented parties**

8  
9 (1) Self-represented parties are exempt from the requirement to file documents  
10 electronically.

11  
12 (2) A self-represented party may agree to file documents electronically. A self-  
13 represented party agrees to file documents electronically by filing a notice  
14 with the court and serving it on the other parties.

15  
16 (3) In cases involving both represented and self-represented parties, represented  
17 parties are required to file documents electronically; however, in these cases,  
18 each self-represented party is to file documents by nonelectronic means  
19 unless the self-represented party affirmatively agrees otherwise.

20  
21 **(c) Trial courts**

22  
23 Trial courts are exempt from the requirement to file documents electronically, but  
24 are permitted to file documents electronically.

25  
26 **(d) Excuse for undue hardship or significant prejudice**

27  
28 A party must be excused from the requirement to file documents electronically if  
29 the party shows undue hardship or significant prejudice. A court must have a  
30 process for parties, including represented parties, to apply for relief and a procedure  
31 for parties excused from filing documents electronically to file them by  
32 conventional means.

1 **(e) Applications for fee waivers**

2  
3 The court may permit electronic filing of an application for waiver of court fees  
4 and costs in any proceeding in which the court accepts electronic filings.

5  
6 **(f) Effect of document filed electronically**

7  
8 (1) A document that the court, a party, or a trial court files electronically under the  
9 rules in this article has the same legal effect as a document in paper form.

10  
11 (2) Filing a document electronically does not alter any filing deadline.

12  
13 **(g) Paper documents**

14  
15 When it is not feasible for a party to convert a document to electronic form by  
16 scanning, imaging, or another means, the court may allow that party to file the  
17 document in paper form.

18  
19 **Rule 8.72. Documents that may be filed electronically**

20  
21 **(a) In general**

22  
23 The court may permit electronic filing of a document by a party or trial court in any  
24 appeal or original proceeding unless the rules in this article or other legal authority  
25 expressly prohibit electronic filing.

26  
27 **(b) Application for waiver of court fees and costs**

28  
29 The court may permit electronic filing of an application for waiver of court fees and  
30 costs in any proceeding in which the court accepts electronic filings.

31  
32 **(c) Orders, opinions, and notices**

33  
34 The court may electronically file any notice, order, opinion, or other document  
35 prepared by the court.

36  
37 **(d) Effect of document filed electronically**

38  
39 (1) A document that the court, a party, or a trial court files electronically under  
40 the rules in this article has the same legal effect as a document in paper form.

41  
42 (2) Filing a document electronically does not alter any filing deadline.

43  
44 *Rule 8.72 adopted effective July 1, 2010.*

1 **Rule 8.73. Court order requiring electronic service or filing**

2  
3 **(a) Court order**

4  
5 (1) ~~The court may, on the motion of any party or on its own motion, provided~~  
6 ~~that the order would not cause undue hardship or significant prejudice to any~~  
7 ~~party, order all parties to:~~

8  
9 (A) ~~Serve all documents electronically, except when personal service is~~  
10 ~~required by statute or rule;~~

11  
12 (B) ~~File all documents electronically; or~~

13  
14 (C) ~~Serve and file all documents electronically, except when personal~~  
15 ~~service is required by statute or rule.~~

16  
17 (2) ~~The court will not:~~

18  
19 (A) ~~Order a self-represented party to electronically serve or file documents;~~

20  
21 (B) ~~Order a party to electronically serve or file documents if the party~~  
22 ~~would be required to pay a fee to an electronic filing service provider to~~  
23 ~~file or serve the documents and the party objects to paying this fee in its~~  
24 ~~opposition to the motion under (1); or~~

25  
26 (C) ~~Order a trial court to electronically serve or file documents.~~

27  
28 (3) ~~If the reviewing court proposes to make an order under (1) on its own motion,~~  
29 ~~the court must mail notice to the parties. Any party may serve and file an~~  
30 ~~opposition within 10 days after the notice is mailed or as the court specifies.~~

31  
32 **(b) Additional provisions of order**

33  
34 ~~The court's order may also provide that documents previously filed in paper form~~  
35 ~~may be resubmitted in electronic form.~~

36  
37 **(c) Filing in paper form**

38  
39 ~~When it is not feasible for a party to convert a document to electronic form by~~  
40 ~~scanning, imaging, or another means, the court may allow that party to serve, file,~~  
41 ~~or serve and file the document in paper form.~~

42  
43 **Rule 8.74 8.72. Responsibilities of court**

44  
45 **(a) Publication of electronic filing requirements**

1 ~~When the court permits electronic filing it~~ The court will publish, in both electronic  
2 and print formats, the court's electronic filing requirements.

3  
4 **(b) Problems with electronic filing**

5  
6 If the court is aware of a problem that impedes or precludes electronic filing, it  
7 must promptly take reasonable steps to provide notice of the problem.

8  
9 **Rule 8.75 8.73. Contracts with electronic filing service providers**

10  
11 **(a) Right to contract**

- 12  
13 (1) The court may contract with one or more electronic filing service providers to  
14 furnish and maintain an electronic filing system for the court.  
15  
16 (2) If the court contracts with an electronic filing service provider, the court may  
17 require electronic filers to transmit the documents to the provider.  
18  
19 (3) If the court contracts with an electronic service provider or the court has an  
20 in-house system, the provider or system must accept filing from other  
21 electronic filing service providers to the extent the provider or system is  
22 compatible with them.

23  
24 **(b) Provisions of contract**

25  
26 The court's contract with an electronic filing service provider may allow the  
27 provider to charge electronic filers a reasonable fee in addition to the court's filing  
28 fee. The contract may require that the electronic filing service provider agree to  
29 waive a fee that normally would be charged to a party when the court orders that  
30 the fee be waived for that party. The contract may also allow the electronic filing  
31 service provider to make other reasonable requirements for use of the electronic  
32 filing system.

33  
34 **(c) Transmission of filing to court**

35  
36 An electronic filing service provider must promptly transmit any electronic filing  
37 and any applicable filing fee to the court.

38  
39 **(d) Confirmation of receipt and filing of document**

- 40  
41 (1) An electronic filing service provider must promptly send to an electronic filer  
42 its confirmation of the receipt of any document that the filer has transmitted  
43 to the provider for filing with the court.  
44

1 (2) The electronic filing service provider must send its confirmation to the filer’s  
2 electronic service address and must indicate the date and time of receipt, in  
3 accordance with rule 8.77 ~~9(a)~~.  
4

5 (3) After reviewing the documents, the court must promptly transmit to the  
6 electronic filing service provider and the electronic filer the court’s  
7 confirmation of filing or notice of rejection of filing, in accordance with rule  
8 8.77 ~~9~~.  
9

10 **(e) Ownership of information**

11 All contracts between the court and electronic filing service providers must  
12 acknowledge that the court is the owner of the contents of the filing system and has  
13 the exclusive right to control the system’s use.  
14

15  
16 **Rule 8.76 8.74. Responsibilities of electronic filer**

17  
18 **(a) Conditions of filing**

19 Each electronic filer must:

- 20  
21  
22 (1) Comply with any court requirements designed to ensure the integrity of  
23 electronic filing and to protect sensitive personal information;  
24  
25 (2) Furnish information that the court requires for case processing;  
26  
27 (3) Take all reasonable steps to ensure that the filing does not contain computer  
28 code, including viruses, that might be harmful to the court’s electronic filing  
29 system and to other users of that system;  
30  
31 (4) Furnish one or more electronic service addresses, in the manner specified by  
32 the court, at which the electronic filer agrees to accept service; and  
33  
34 (5) Immediately provide the court and all parties with any change to the  
35 electronic filer’s electronic service address.  
36

37 **(b) Format of documents to be filed electronically**

- 38  
39 (1) A document that is filed electronically with the court must be in a format  
40 specified by the court unless it cannot be created in that format.  
41  
42 (2) The format adopted by a court must meet the following minimum  
43 requirements:  
44  
45 (A) The format must be text-searchable while maintaining original document  
46 formatting.

1  
2  
3       (1) (B) The software for creating and reading documents must be in the  
4 public domain or generally available at a reasonable cost.

5  
6       (2) (C) The printing of documents must not result in the loss of document  
7 text, format, or appearance.

8  
9       (3) The page numbering of a document filed electronically must begin with the  
10 first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,  
11 3). The page number need not appear on the cover page.

12  
13       (4) If a document is filed electronically under the rules in this article and cannot  
14 be formatted to be consistent with a formatting rule elsewhere in the  
15 California Rules of Court, the rules in this article prevail.

16  
17 **Rule ~~8.77~~ 8.75. Requirements for signatures on documents**

18  
19 **(a) Documents signed under penalty of perjury**

20  
21 If a document to be filed electronically must be signed under penalty of perjury, the  
22 following procedure applies:

- 23  
24       (1) The document is deemed signed by the declarant if, before filing, the  
25 declarant has signed a printed form of the document.
- 26  
27       (2) By electronically filing the document, the electronic filer certifies that (1) has  
28 been complied with and that the original signed document is available for  
29 inspection and copying at the request of the court or any other party.
- 30  
31       (3) At any time after the document is filed, any other party may serve a demand  
32 for production of the original signed document. The demand must be served  
33 on all other parties but need not be filed with the court.
- 34  
35       (4) Within five days of service of the demand under (3), the party on whom the  
36 demand is made must make the original signed document available for  
37 inspection and copying by all other parties.
- 38  
39       (5) At any time after the document is filed, the court may order the filing party to  
40 produce the original signed document in court for inspection and copying by  
41 the court. The order must specify the date, time, and place for the production  
42 and must be served on all parties.

43  
44 **(b) Documents not signed under penalty of perjury**

1 If a document does not require a signature under penalty of perjury, the document  
2 is deemed signed by the party if the document is filed electronically.

3  
4 **(c) Documents requiring signatures of multiple parties**

5  
6 When a document to be filed electronically, such as a stipulation, requires the  
7 signatures of multiple parties, the following procedure applies:

- 8  
9 (1) The party filing the document must obtain the signatures of all parties either  
10 in the form of an original signature on a printed form of the document or in  
11 the form of a copy of the signed signature page of the document. By  
12 electronically filing the document, the electronic filer indicates that all parties  
13 have signed the document and that the filer has the signatures of all parties in  
14 a form permitted by this rule in his or her possession.  
15  
16 (2) The party filing the document must maintain the original signed document  
17 and any copies of signed signature pages and must make them available for  
18 inspection and copying as provided in (a)(2). The court and any other party  
19 may demand production of the original signed document and any copies of  
20 signed signature pages in the manner provided in (a)(3)–(5).

21  
22 **(d) Digital signature**

23  
24 A party is not required to use a digital signature on an electronically filed  
25 document.

26  
27 **(e) Judicial signatures**

28  
29 If a document requires a signature by a court or a judicial officer, the document  
30 may be electronically signed in any manner permitted by law.

31  
32 **Rule ~~8.78~~ 8.76. Payment of filing fees**

33  
34 **(a) Use of credit cards and other methods**

35  
36 The court may permit the use of credit cards, debit cards, electronic fund transfers,  
37 or debit accounts for the payment of filing fees associated with electronic filing, as  
38 provided in Government Code section 6159 and other applicable law. The court  
39 may also authorize other methods of payment.

40  
41 **(b) Fee waivers**

42  
43 Eligible persons may seek a waiver of court fees and costs, as provided in  
44 Government Code section 68634.5 and rule 8.26.

45  
46 **Advisory Committee Comment**

1 **Subdivision (b).** A fee charged by an electronic filing service provider under  
2 rule ~~8.75(b)~~ 8.73(b) is not a court fee that can be waived under Government Code section 68634.5  
3 and rule 8.26.  
4

5 **Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing**  
6

7 **(a) Confirmation of receipt and filing of document**  
8

9 (1) *Confirmation of receipt*  
10

11 When the court receives an electronically submitted document, the court must  
12 promptly send the electronic filer confirmation of the court's receipt of the  
13 document, indicating the date and time of receipt. A document is considered  
14 received at the date and time the confirmation of receipt is created.  
15

16 (2) *Confirmation of filing*  
17

18 If the document received by the court under (1) complies with filing  
19 requirements, the court must promptly send the electronic filer confirmation  
20 that the document has been filed. The filing confirmation must indicate the  
21 date and time of filing and is proof that the document was filed on the date  
22 and at the time specified. The filing confirmation must also specify:  
23

24 (A) Any transaction number associated with the filing;

25 (B) The titles of the documents as filed by the court; and  
26

27 (C) The fees assessed for the filing.  
28

29 (3) *Transmission of confirmations*  
30

31 The court must send receipt and filing confirmation to the electronic filer at  
32 the electronic service address that the filer furnished to the court under rule  
33 ~~8.764~~(a)(4). The court must maintain a record of all receipt and filing  
34 confirmations.  
35

36 (4) *Filer responsible for verification*  
37

38 In the absence of the court's confirmation of receipt and filing, there is no  
39 presumption that the court received and filed the document. The electronic  
40 filer is responsible for verifying that the court received and filed any  
41 document that the electronic filer submitted to the court electronically.  
42  
43

44 **(b) Notice of rejection of document for filing**  
45

46 If the clerk does not file a document because it does not comply with applicable  
47 filing requirements, the court must promptly send notice of the rejection of the

1 document for filing to the electronic filer. The notice must state the reasons that the  
2 document was rejected for filing.

3  
4 **(c) Document received after close of business**

5  
6 A document that is received electronically by the court after 11:59 p.m. is deemed  
7 to have been received on the next court day.

8  
9 **(d) Delayed delivery**

10  
11 ~~If a technical problem with a court's electronic filing system prevents the court~~  
12 ~~from accepting an electronic filing on a particular court day, and the electronic filer~~  
13 ~~demonstrates that he or she attempted to electronically file the document on that~~  
14 ~~day, the court must deem the document as filed on that day.~~

15  
16 If a filer fails to meet a filing deadline imposed by court order, rule, or statute  
17 because of a failure at any point in the electronic transmission and receipt of a  
18 document, the filer may file the document on paper or electronically as soon  
19 thereafter as practicable and accompany the filing with a motion to accept the  
20 document as timely filed. For good cause shown, the court may enter an order  
21 permitting the document to be filed nunc pro tunc to the date the filer originally  
22 sought to transmit the document electronically.

23  
24 **(e) Endorsement**

- 25  
26 (1) The court's endorsement of a document electronically filed must contain the  
27 following: "Electronically filed by [Name of Court], on \_\_\_\_\_ (date)," followed by the name of the court clerk.  
28  
29 (2) The endorsement required under (1) has the same force and effect as a  
30 manually affixed endorsement stamp with the signature and initials of the  
31 court clerk.  
32  
33 (3) A record on appeal, brief, or petition in an appeal or original proceeding that  
34 is filed and endorsed electronically may be printed and served on the  
35 appellant or respondent in the same manner as if it had been filed in paper  
36 form.  
37  
38

39 **Rule ~~8.71~~ 8.78. Electronic service**

40  
41 **(a) Authorization for electronic service; exceptions**

- 42  
43 (1) A document may be electronically served under these rules:  
44  
45 (A) If electronic service is provided for by law or court order; or  
46

1 (B) If the recipient agrees to accept electronic services as provided by these  
2 rules and the document is otherwise authorized to be served by mail,  
3 express mail, overnight delivery, or fax transmission.  
4

5 (2) A party indicates that the party agrees to accept electronic service by:  
6

7 ~~(A)~~—~~S~~ serving a notice on all parties that the party accepts electronic service  
8 and filing the notice with the court. The notice must include the  
9 electronic service address at which the party agrees to accept service;  
10 ~~or,~~

11  
12 ~~(B)~~—~~Electronically filing any document with the court. The act of electronic~~  
13 ~~filing is evidence that the party agrees to accept service at the electronic~~  
14 ~~service address that the party has furnished to the court under rule~~  
15 ~~8.76(a)(4).~~  
16

17 ~~(3)~~—~~A party that has consented to electronic service under (2) and has used an~~  
18 ~~electronic filing service provider to serve and file documents in a case~~  
19 ~~consents to service on that electronic filing service provider as the designated~~  
20 ~~agent for service for the party in the case, until such time as the party~~  
21 ~~designates a different agent for service.~~  
22

23 (4) (3) A document may be electronically served on a nonparty if the nonparty  
24 consents to electronic service or electronic service is otherwise provided for  
25 by law or court order. For purposes of this rule, the word party includes a  
26 nonparty who has agreed to or is otherwise required by law or court order to  
27 accept electronic service or to electronically serve documents.  
28

29 **(b) Maintenance of electronic service lists**  
30

31 When the court orders or permits electronic filing service in a case, it must  
32 maintain and make available electronically to the parties an electronic service list  
33 that contains the parties' current electronic service addresses as provided by the  
34 parties that have filed electronically been ordered to or have consented to electronic  
35 service in the case.  
36

37  
38 **(c) Service by the parties**  
39

40 Notwithstanding (b), parties are responsible for electronic service on all other  
41 parties in the case. A party may serve documents electronically directly, by an  
42 agent, or through a designated electronic filing service provider.  
43

44 **(d) Change of electronic service address**  
45

1 (1) A party whose electronic service address changes while the appeal or original  
2 proceeding is pending must promptly file a notice of change of address  
3 electronically with the court and must serve this notice electronically on all  
4 other parties.

5  
6 (2) A party's election to contract with an electronic filing service provider to  
7 electronically file and serve documents or to receive electronic service of  
8 documents on the party's behalf does not relieve the party of its duties under  
9 (1).

10  
11 ~~(3) An electronic service address is presumed valid for a party if the party files~~  
12 ~~electronic documents with the court from that address and has not filed and~~  
13 ~~served notice that the address is no longer valid.~~

14  
15 **(e) Reliability and integrity of documents served by electronic notification**

16 A party that serves a document by means of electronic notification must:

- 17  
18  
19 (1) Ensure that the documents served can be viewed and downloaded using the  
20 hyperlink provided;  
21  
22 (2) Preserve the document served without any change, alteration, or modification  
23 from the time the document is posted until the time the hyperlink is  
24 terminated; and  
25  
26 (3) Maintain the hyperlink until the case is final.

27  
28 **(f) Proof of service**

29  
30 (1) Proof of electronic service may be by any of the methods provided in Code of  
31 Civil Procedure section 1013a, except that the proof of service must state  
32 with the following exceptions:

33  
34 (A) The proof of electronic service does not need to state that the person  
35 making the service is not a party to the case.

36  
37 (B) The proof of electronic service must state:

38  
39 (i) The electronic service address of the person making the service, in  
40 addition to that person's residence or business address;

41  
42 ~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and  
43 place of deposit in the mail;

44  
45 ~~(C)~~ (iii) The name and electronic service address of the person served, in  
46 place of that person's name and address as shown on the envelope; and

1  
2           (ⓓ) (iv) That the document was served electronically, in place of the  
3           statement that the envelope was sealed and deposited in the mail with  
4           postage fully prepaid.  
5

6           (2) Proof of electronic service may be in electronic form and may be filed  
7           electronically with the court.  
8

9           (3) The party filing the proof of electronic service must maintain the printed  
10          form of the document bearing the declarant's original signature and must  
11          make the document available for inspection and copying on the request of the  
12          court or any party to the action or proceeding in which it is filed, in the  
13          manner provided in rule 8.77(e)75.  
14

15   **(g) Electronic service by or on court**  
16

17          (1) The court may electronically serve any notice, order, opinion, or other  
18          document issued by the court in the same manner that parties may serve  
19          documents by electronic service.  
20

21          (2) A document may be electronically served on a court if the court consents to  
22          electronic service or electronic service is otherwise provided for by law or  
23          court order. A court indicates that it agrees to accept electronic service by:  
24

25                (A) Serving a notice on all parties that the court accepts electronic service.  
26                The notice must include the electronic service address at which the  
27                court agrees to accept service; or  
28

29                (B) Adopting a local rule stating that the court accepts electronic service.  
30                The rule must indicate where to obtain the electronic service address at  
31                which the court agrees to accept service.  
32

33   **Rule 8.739. Court order requiring electronic service ~~or filing~~**  
34

35   **(a) Court order**  
36

37          (1) The court may, on the motion of any party or on its own motion, provided  
38          that the order would not cause undue hardship or significant prejudice to any  
39          party, order some or all parties to:  
40

41                (A) Serve all documents electronically, except when personal service is  
42                required by statute or rule; or  
43

44                (B) ~~File all~~ Accept electronic service of documents, ~~electronically; or~~  
45



- 1 (2) Any conventional font may be used. The font may be either proportionally  
2 spaced or monospaced.  
3
- 4 (3) The font style must be roman; but for emphasis, italics or boldface may be  
5 used or the text may be underscored. Case names must be italicized or  
6 underscored. Headings may be in uppercase letters.  
7
- 8 (4) Except as provided in (11), the font size, including footnotes, must not be  
9 smaller than 13-point, and both sides of the paper may be used.  
10
- 11 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced.  
12 Headings and footnotes may be single-spaced. Quotations may be block-  
13 indented and single-spaced. Single-spaced means six lines to a vertical inch.  
14
- 15 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the  
16 top and bottom.  
17
- 18 (7) The pages must be consecutively numbered. ~~The tables and the body of the~~  
19 ~~brief may have different numbering systems.~~ The page numbering must begin  
20 with the cover page as page 1 and use only Arabic numerals (e.g. 1, 2, 3). The  
21 page number need not appear on the cover page.  
22
- 23 (8) If filed in paper form, the brief must be bound on the left margin. If the brief  
24 is stapled, the bound edge and staples must be covered with tape.  
25
- 26 (9) The brief need not be signed.  
27
- 28 (10) If filed in paper form, the cover must be in the color prescribed by rule  
29 8.40(b). In addition to providing the cover information required by rule  
30 8.40(c), the cover must state:  
31
- 32 (A) The title of the brief;  
33
- 34 (B) The title, trial court number, and Court of Appeal number of the case;  
35
- 36 (C) The names of the trial court and each participating trial judge;  
37
- 38 (D) The name of the party that each attorney on the brief represents.  
39
- 40 (11) If the brief is produced on a typewriter:  
41
- 42 (A) A typewritten original and carbon copies may be filed only with the  
43 presiding justice's permission, which will ordinarily be given only to  
44 unrepresented parties proceeding in forma pauperis. All other  
45 typewritten briefs must be filed as photocopies.  
46

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- (B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.
  
- (C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(c)–(e) \* \* \*

**Advisory Committee Comment**

\* \* \*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer Rule

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Kimberly DaSilva, (415) 865-4534, kimberly.dasilva@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda:

Project #2) Collection and Disbursement of Fines and Fees After Intercounty Probation Case Transfers: Develop recommendations to clarify the requirements for the collection and disbursement of fines, fees, and assessments after intercounty transfers under Penal Code section 1203.9; develop related rule and form proposals as needed

Project #15) Intercounty Transfer Procedures: Consider rule, form, and legislative proposals to facilitate court implementation of intercounty transfer procedures under Penal Code section 1203.9

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR16-\_\_**

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Title	Action Requested
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 4.530	January 1, 2017
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov

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### **Executive Summary and Origin**

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court to (1) clarify file transfer requirements after intercounty transfer under Penal Code section 1203.9, (2) require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a case after transfer, and (3) make the rule consistent with Assembly Bill 673's amendments to section 1203.9 .

### **The Proposal**

#### **File Transfer Requirements**

Rule 4.530(g)(5) requires a transferring court to transmit “the entire court file, except exhibits, to the receiving court within two weeks of the transfer order” after an intercounty transfer under Penal Code section 1203.9. (Cal. Rules of Court, rule 4.530(g)(5).) The advisory committee comment on subdivision (g)(5) suggests, however, that “[b]efore transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.” The rule was designed to ensure that receiving courts are provided complete case information and that transferring courts do not incur the cost and burden of providing receiving courts with certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings still pending at the time of transfer.

*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.*

Once a person on either probation or mandatory supervision has been transferred to his or her county of permanent residence under Penal Code section 1203.9, rule 4.530(g)(5) requires the transferring court to transmit “any records of payments and the *entire court file*, except exhibits, to the receiving court within two weeks of the transfer order.” (Italics added.) The advisory committee comment to the rule explains the provision as follows:

Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

The requirement that the transferring court transmit the entire court file is designed to ensure that receiving courts are provided complete case information, while transferring courts do not incur the cost and burden of providing certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings that are still pending at the time of transfer.

The proposal would amend rule 4.530(g)(5) to emphasize that the transferring court must transmit the entire *original* court file and add an exception to the file transfer requirements for cases involving codefendants. In codefendant cases, the proposal would require transferring courts instead, to transmit *certified copies* of the entire original court file. The proposal would also amend the related advisory committee comment to explain that transferring courts should retain the original court file to properly adjudicate any pending or future codefendant proceedings.

### **Prior Circulation**

This proposal was circulated for public comment during the spring of 2011 in conjunction with another proposal to amend rule 4.530, which would have prescribed a posttransfer procedure for collection and disbursement of fines, fees, and restitution. While the file transfer portion of the proposal received only a few comments, the proposal concerning collection and disbursement of fines, fees, and restitution generated numerous divergent viewpoints among important stakeholders. As a result, both proposals were deferred.

The proposal to clarify file transfer requirements under rule 4.530 is being recirculated at this time because these requirements may have been overshadowed by the fines, fees, and restitution portion of the invitation to comment, as well as the fact that the comment period was nearly five years ago.

### **Subsequent Reduction and Disposition Notification**

This portion of the proposal responds to requests from court executive officers for notification of disposition changes after intercounty transfers so that courts can provide accurate information to the public when requested. The proposal would amend rule 4.530 to require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a transferred case.

Under rule 4.530, subdivision (g)(5), once a probation or mandatory supervision case is transferred to the supervisee's county of permanent residence, the transferring court transmits the entire court file, with specified exceptions, to the receiving court. After transfer, rule 4.530 requires no additional communication between the two courts regarding the status of the case.

Because transferring courts' case management systems do not show any changes to the status of a case unless those changes are manually entered into their systems, reductions from a felony to a misdemeanor or dismissals in a receiving court after transfer are not recorded by the transferring court. As a result those cases continue to be categorized, inaccurately, as felonies or as active cases by the receiving court. Consequently, when members of the public search for cases concerning those defendants, the information provided by the transferring court is inaccurate. Inaccurate felony convictions and/or active cases attached to a defendant may lead to improper denials of employment and housing and may have other negative collateral consequences.

This portion of the proposal would amend rule 4.530 to add a subdivision (h), which would require that receiving courts notify transferring courts in writing of reductions from felonies to misdemeanors and of dismissals in cases transferred under Penal Code section 1203.9.

### **Compliance with AB 673 (Collection and Disbursement of Court-Ordered Debt)**

Assembly Bill 673 changed court jurisdiction over the collection and distribution of court-ordered debt after intercounty transfer. The bill was chaptered on September 3, 2015, and became effective January 1, 2016. Although receiving courts continue to accept entire jurisdiction over cases transferred under Penal Code section 1203.9,<sup>1</sup> as of January 1, jurisdiction over the collection and disbursement of fines, forfeitures, penalties, assessments, and restitution ordered by the transferring court but not fully paid, remains with the transferring court unless the receiving court elects to collect and the transferring court approves the arrangement. The bill also made other changes as set forth below.

Specifically, AB 673 made the following changes to Penal Code section 1203.9:

---

<sup>1</sup> With the exception of jurisdiction over undetermined victim restitution, pursuant to section 1203.9, subdivision (a)(3), which also remains with the transferring court.

- Changes the effective date of transfer to the date the transferring court makes the order of transfer (subdivision (b)).
- Requires courts to order that unpaid fines, fees, forfeitures, penalties, assessments, or restitution at the time of transfer be paid by the defendant to the collection program for the transferring court for distribution and accounting once collected (subdivision (d)(1)).
- Allows receiving courts and county probation departments to impose additional local fees and costs as authorized and requires that they notify the collection program for the transferring court of those changes (subdivision (d)(2)).
- Requires that local fees imposed by receiving courts and county probation departments be paid by the defendant to the collection program for the transferring court, which shall remit those fees and costs to the receiving court for accounting and distribution (subdivision (d)(3)).
- Allows a receiving court, upon approval of the transferring court, to elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised and requires that the receiving court's collection program transmit the revenue collected to the collection program for the transferring court for deposit, accounting, and distribution. In this situation, the collection program for the receiving court shall not charge administrative fees without a written agreement with the transferring court's collection program and the collection program for the receiving court shall not report revenue owed or collected on behalf of the collection program for the transferring court in annual reports to the Judicial Council (subdivisions (e)(1), (2)).
- The bill also requires that the Judicial Council consider the adoption of rules of court as it deems appropriate to implement the collection, accounting, and disbursement requirements of the bill (subdivision (g)).

The following proposal would bring California Rules of Court, rule 4.530—which implements Penal Code section 1203.9—into compliance with these recent changes.

The proposal would make the following amendments to rule 4.530:

- Change the effective date of the transfer to the date of the transfer order, as required by AB 673;
- Require the transferring court to retain records of payment upon transfer of the court file to the receiving court;
- Require the probation officer of the transferring county to retain records of payment upon transfer of the file to the receiving county;
- Delete the two-week holding period of the transferring court and probation files on the transferred case;
- Add a subdivision detailing the new jurisdictional requirements regarding court-ordered debt; and,
- Require court collection, accounting, and disbursement of court-ordered debt procedures to be consistent with Judicial Council fiscal procedures located on the Budget and

Finance page of the Judicial Council website. It is anticipated that the Judicial Council will adopt specific fiscal procedures addressing AB 673 during its June 2016 meeting.

### **Alternatives Considered**

The committee considered creating a form for receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a transferred case. However, because the development of new forms can be expensive and burdensome to courts and because many courts either have transitioned or will soon be transitioning to new case management systems, the committee recommends a rule amendment, which will provide courts with a more cost-effective and flexible approach; courts would be able to fashion a method of notification which best matches their individual systems.

Also, it is anticipated that subsequent proposals for form changes related to compliance with AB 673 will circulate for public comment during a future cycle.

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

No significant implementation requirements, costs, or operational impacts for courts are expected as a result of this proposal. It is anticipated that courts will either use regular mail or electronic mail to provide the proposed notification of subsequent reductions or dismissals by the receiving court and although implementation requirements, costs, and operational impacts were required pursuant to AB 673, nothing additional would be required by this rule proposal, which merely clarifies existing law.

## 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 2 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. Cal. Rules of Court, rule 4.530, at pages 7–9
2. SPR11-33, previous Invitation to Comment, circulated in 2011, “Criminal Procedure: Intercounty Probation Transfer Rule”

Rule 4.530 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 4.530. Intercounty transfer of probation and mandatory supervision cases**

2  
3 (a)–(f) \* \* \*

4  
5 (g) **Transfer**

- 6  
7 (1) If the transferring court determines that the permanent residence of the  
8 supervised person is in the county of the receiving court, the transferring  
9 court must transfer the case unless it determines that transfer would be  
10 inappropriate and states its reasons on the record.  
11  
12 (2) To the extent possible, the transferring court must establish any amount of  
13 restitution owed by the supervised person before it orders the transfer.  
14  
15 (3) Transfer is effective the date the transferring court orders the transfer. Upon  
16 transfer of the case, the receiving court must accept the entire jurisdiction  
17 over the case.  
18  
19 (4) The orders for transfer must include an order committing the supervised  
20 person to the care and custody of the probation officer of the receiving county  
21 and an order for reimbursement of reasonable costs for processing the  
22 transfer to be paid to the county of the transferring court in accordance with  
23 Penal Code section 1203.1b.  
24  
25 (5) Upon transfer of the case, the transferring court must transmit any records  
26 of payments and the entire original court file, except exhibits, to the receiving  
27 court within two weeks of the transfer order in all cases in which the  
28 supervisee is the sole defendant, except the transferring court shall not  
29 transfer (A) exhibits or (B) any records of payments.  
30  
31 If transfer is ordered in a case involving more than one defendant, the  
32 transferring court must transmit any records of payments and certified copies  
33 of the entire original court file, except exhibits, to the receiving court within  
34 two weeks of the transfer order.  
35  
36 (6) Upon transfer the probation officer of the transferring county must transmit,  
37 at a minimum, any court orders, probation or mandatory supervision reports,  
38 and case plans, and all records of payments to the probation officer of the  
39 receiving county within two weeks of the transfer order.  
40  
41 (7) Upon transfer of the case, the probation officer of the transferring county  
42 must notify the supervised person of the transfer order. The supervised  
43 person must report to the probation officer of the receiving county no later

1 than 30 days after transfer unless the transferring court orders the supervised  
2 person to report sooner. If the supervised person is in custody at the time of  
3 transfer, the supervised person must report to the probation officer of the  
4 receiving county no later than 30 days after being released from custody  
5 unless the transferring court orders the supervised person to report sooner.  
6 Any jail sentence imposed as a condition of probation or mandatory  
7 supervision prior to transfer must be served in the transferring county unless  
8 otherwise authorized by law.

9  
10 **(h) Reductions or dispositions following transfer**

11  
12 The receiving court must provide written notice to the transferring court when:

- 13  
14 (1) The receiving court reduces the supervised person's conviction from a felony  
15 to a misdemeanor; or  
16  
17 (2) The receiving court otherwise disposes of a supervisee's case.

18  
19 **(i) Court-ordered debt**

20  
21 (1) In accordance with Penal Code section 1203.9(d) and (e):

22  
23 (A) If the transferring court has ordered the defendant to pay fines, fees,  
24 forfeitures, penalties, assessments, or restitution, the transfer order must  
25 require that those and any other amounts ordered by the transferring  
26 court that are still unpaid at the time of transfer be paid by the  
27 defendant to the collection program for the transferring court for proper  
28 distribution and accounting once collected.

29  
30 (B) The receiving court and receiving county probation department may  
31 impose additional local fees and costs as authorized.

32  
33 (C) Upon approval of a transferring court, a receiving court may elect to  
34 collect all of the court-ordered payments from a defendant attributable  
35 to the case under which the defendant is being supervised.

36  
37 (2) Policies and procedures for implementation of the collection, accounting, and  
38 disbursement of court-ordered debt under this rule must be consistent with  
39 Judicial Council fiscal procedures available at [www.courts.ca.gov](http://www.courts.ca.gov).

40  
41 **Advisory Committee Comment**  
42

1 Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except  
2 exhibits and any records of payments, to the court of the receiving county in all cases in which  
3 the supervisee is the sole defendant. Before transmitting the entire original court file, transferring  
4 courts should consider retaining copies of the court file in the event of an appeal or a writ. In  
5 cases involving more than one defendant, subdivision (g)(5) requires the transferring court to  
6 transmit certified copies of the entire original court file to ensure that transferring courts are able  
7 to properly adjudicate any pending or future codefendant proceedings.

8  
9 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or  
10 mandatory supervision before transfer must be served in the transferring county unless otherwise  
11 authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors  
12 of two or more counties with work furlough programs to enter into agreements to allow work-  
13 furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another  
14 county jail.

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### SPR11-33

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Title	Action Requested
Criminal Procedure: Intercounty Probation Transfer Rule	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.530	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 <a href="mailto:arturo.castro@jud.ca.gov">arturo.castro@jud.ca.gov</a>

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### Summary

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court to clarify file transfer requirements and prescribe a procedure for the collection and disbursement of fines, fees, and restitution after intercounty transfer under Penal Code section 1203.9.

### Discussion

The Criminal Law Advisory Committee proposes two amendments to rule 4.530, which governs intercounty probation transfer procedure under Penal Code section 1203.9.<sup>1</sup>

### Collection and Disbursement of Fines, Fees, and Restitution After Transfer

Probationers often owe various fines, fees, and restitution at the time of intercounty transfer. Although rule 4.530 prescribes various transfer requirements—including deadlines, notice, and mandatory orders—the rule fails to specify which entity is responsible for collecting and disbursing fines, fees, and restitution *after* transfer. As a result, transfers cause considerable confusion between local entities<sup>2</sup> responsible for collections. Some local collection entities prefer to continue to collect after cases are transferred, while others prefer to transfer collection responsibilities to the local collection entity of the receiving county.

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<sup>1</sup> In a companion proposal, the Criminal Law Advisory Committee also proposes three new mandatory forms—*Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (CR-252)—for use by petitioners and courts to facilitate intercounty probation transfer procedure under Penal Code section 1203.9 and rule 4.530.

<sup>2</sup> The collection of fines, fees, and restitution owed by probationers is conducted by local courts, probation departments, county collections programs, or collection agencies.

*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.*

Complex disbursement requirements, which are unique to each county, add to the confusion. Only the collection entity in the county in which the fines and fees were imposed is sufficiently familiar with local disbursement requirements to properly disburse any money collected.

In the absence of guidance, disparate practices have emerged statewide. As a result, many local courts and probation departments desire uniformity and have requested that rule 4.530 be amended to prescribe a collection and disbursement procedure.<sup>3</sup>

To promote a uniform posttransfer collection and disbursement procedure, the committee proposes adding the following subdivision to rule 4.530:

(h) Collection of fines, fees, and restitution after transfer

- (1) As used in this subdivision, the phrase “local collection entity” means the superior court, probation department, county collection program, or any other collection agency responsible for collecting fines, fees, and restitution in criminal cases.
- (2) Upon transfer of the case, the local collection entity of the receiving county must collect any fines, fees, and restitution owed by the probationer and must transmit any money collected to the local collection entity of the transferring county for distribution.

The proposed amendment would require collection to occur in the county of the receiving court, which, by statute, must accept entire jurisdiction over a case after transfer. (Pen. Code, §§ 1203.9(b) & (d).) To ensure compliance with complex local disbursement requirements, the proposal would also require that any money collected be transmitted back to the local collection entity of the transferring county for proper disbursement.

To provide local collection agencies with additional guidance—including, for example, instructions and information about accounts receivable and disbursement prioritizations—the committee will also collaborate with the Administrative Office of the Courts to propose future amendments to the Trial Court Financial Policy and Procedure Manual.

### **File Transfer Requirements**

Rule 4.530(g)(5) requires the transferring court to transmit “any records of payments and the *entire court file*, except exhibits, to the receiving court within two weeks of the transfer order.” (Italics added.) The advisory committee comment to the rule explains the provision as follows:

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<sup>3</sup> To develop the proposal, the Criminal Law Advisory Committee consulted with various stakeholders, including judges, court executive officers, court finance managers, chief probation officers, and representatives of the State Controller’s Office, Probation Business Managers Association, and the AOC Finance Division.

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Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

The requirement is designed to ensure that receiving courts are provided complete case information while transferring courts do not incur the cost and burden of providing certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings that are still pending at the time of transfer.

The proposal would amend rule 4.530(g)(5) to emphasize that the transferring court must transmit the entire *original* court file and add an exception to the file transfer requirements for cases involving codefendants. Specifically, the proposal would require transferring courts to transmit certified copies of the entire original court file in cases involving more than one defendant. The proposal would also amend the related advisory committee comment to explain that transferring courts should retain the original court file to properly adjudicate any pending or future codefendant proceedings.

Rule 4.530 of the California Rules of Court would be amended, effective January 1, 2012, to read:

1 **Rule 4.530. Intercounty probation case transfer**

2  
3 **(a)–(f) \* \* \***

4  
5 **(g) Transfer**

6  
7 (1)–(4) \* \* \*

8  
9 (5) The transferring court must transmit any records of payments and the entire  
10 original court file, except exhibits, to the receiving court within two weeks of  
11 the transfer order in all cases in which the probationer is the sole defendant. If  
12 transfer is ordered in a case involving more than one defendant, the  
13 transferring court must transmit any records of payments and certified copies  
14 of the entire original court file, except exhibits, to the receiving court within  
15 two weeks of the transfer order.

16  
17 (6)–(7) \* \* \*

18  
19 **(h) Collection and disbursement of fines, fees, and restitution after transfer**

20  
21 (1) As used in this subdivision, the phrase “local collection entity” means the  
22 superior court, probation department, county collection program, or any other  
23 collection agency responsible for collecting fines, fees, and restitution in  
24 criminal cases.

25  
26 (2) Upon transfer of the case, the local collection entity of the receiving county  
27 must collect any fines, fees, and restitution owed by the probationer and must  
28 transmit any money collected to the local collection entity of the transferring  
29 county for distribution.

30  
31  
32  
33 **Advisory Committee Comment**

34  
35 Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except  
36 exhibits, to the court of the receiving county in all cases in which the probationer is the sole  
37 defendant. Before transmitting the entire original court file, transferring courts should consider  
38 retaining copies of the court file in the event of an appeal or a writ. In cases involving more than  
39 one defendant, subdivision (g)(5) requires the transferring court to transmit certified copies of the  
40 entire original court file to ensure that transferring courts are able to properly adjudicate any  
41 pending or future codefendant proceedings.

1 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation before  
2 transfer must be served in the transferring county unless otherwise authorized by law. For  
3 example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties  
4 with work furlough programs to enter into agreements to allow work-furlough-eligible persons  
5 sentenced to or imprisoned in one county jail to transfer to another county jail.

## Item SPR11-33 Response Form

**Title:** Criminal Procedure: Intercounty Probation Transfer Rule (amend Cal. Rules of Court, rule 4.530)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Law: Criminal Realignment and Military Service: Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Adrienne Toomey, 415-865-7977

*Adrienne.toomey@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 10, 2015

Project description from annual agenda: Recommend Judicial Council approval of various rule and form proposals to promote timely, consistent, and effective criminal case processing. Specifically, Criminal Justice Realignment: Consider rule, form, and legislative proposals to facilitate court implementation of criminal justice realignment.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Criminal Law: Criminal Realignment and Military Service	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480	January 1, 2017
	Contact
	Adrienne Toomey, 415-865-7977 <a href="mailto:Adrienne.toomey@jud.ca.gov">Adrienne.toomey@jud.ca.gov</a>
Proposed by	
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act, which made significant changes to the sentencing and supervision of persons convicted of felony offenses; (2) facilitate the court's determinations under Penal Code section 1170.9 for defendants with military service;<sup>1</sup> and (3) make nonsubstantive technical amendments.<sup>2</sup> The proposed amendments respond, in part, to recent legislation directing the Judicial Council to amend the rules to promote uniformity in sentencing under the realignment act.<sup>3</sup>

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> The committee is currently developing and will separately propose other sentencing-related amendments to title 4, division 5 of the California Rules of Court.

<sup>3</sup> Assembly Bill 1156 (Brown; Stats. 2015, ch. 378).

*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.*

## **Realignment-related amendments**

### **Background**

The Criminal Justice Realignment Act (realignment act) applied several amended sentencing and supervision provisions to persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (Pen. Code, § 1170(h).) When sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department, unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case. (Pen. Code, § 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (Pen. Code, § 1170(h)(5)(B).)

The realignment act also created “postrelease community supervision,” whereby certain offenders being released from state prison are no longer supervised by the state parole system, but instead supervised by a local county supervision agency. (Pen. Code, §§ 3450–3465.) Postrelease community supervision does not apply to prisoners released from state prison after serving a term for certain of the more dangerous and violent crimes; these prisoners continue to be placed on parole under supervision of the Department of Corrections and Rehabilitation, Division of Adult Parole Operations. (Pen. Code, § 3000.08(a).) Following the realignment act, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings, but instead adversarial judicial proceedings conducted in county superior courts. (Pen. Code, § 1203.2.)

In addition, the realignment legislation amended section 4019, governing entitlement to custody credits applicable to sentences served in county jail, where the underlying crime occurred on or after October 1, 2011.

Finally, Assembly Bill 1156, effective January 1, 2016, amended section 1170.3 to direct the Judicial Council to adopt rules providing criteria for trial judge consideration in sentencing under the realignment act.

### **The Proposal**

The considerable changes to felony sentencing and supervision proceedings engendered by the realignment act require amendments to several rules relating to felony sentencing in title 4, division 5, of the California Rules of Court. This proposal updates the rules and corresponding advisory committee comments to reflect the current statutory sentencing provisions by including reference, where appropriate, to:

- Mandatory supervision under section 1170(h)(5), and the exception to the presumption of mandatory supervision under section 1170(h)(5)(A);
- Postrelease community supervision under sections 3450–3465;
- Parole under section 3000.08;

- Terms of imprisonment in county jail under section 1170(h); and
- Custody credits under section 4019.

The proposal is also designed to incorporate into the rules the legislative policies underlying the realignment act of promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety, where appropriate. (See, e.g., Pen. Code, §§ 17.5, 3450.)

The specific propose amendments are as follows:

- Amend the following rules and/or the corresponding advisory committee comments to incorporate reference to imprisonment in county jail under section 1170(h), mandatory supervision under section 1170(h)(5), postrelease community supervision under sections 3450–3465, parole under section 3000.08, and/or local county correctional administrator or sheriff, where appropriate: 4.403, 4.405, 4.406, 4.410, 4.412, 4.414, 4.420, 4.421, 4.423, 4.425, 4.427, 4.433, 4.435, 4.452, and 4.480.
- Further amend rule 4.405 and the advisory committee comment as follows:
  - To the rule, add list items (11)–(16), to read:
    - (11) “Mandatory supervision” means the period of supervision defined in section 1170(h)(5)(A), (B).
    - (12) “Postrelease community supervision” means the period of supervision governed by section 3451 et seq.
    - (13) “Evidence-based practices” means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.
    - (14) “Community-based corrections program” means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)–(5).
    - (15) “Local supervision” means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.
    - (16) “County jail” means local county correctional facility.
  - To the advisory committee comment:
    - At the end of the comment, add “Item (13), see sections 17.5(a)(9) and 3450(b)(9). [¶] Item (15), see section 1229(e).”
    - At the end of the third sentence in the first paragraph, add the following sentence to conform comment with proposed amendment to the rule: “This language was subsequently changed to “three authorized terms of imprisonment” to incorporate county jail sentences under section 1170(h) in light of more recent legislative amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.)”

- Make specified nonsubstantive amendments.
- Further amend rule 4.406 by adding paragraph (b)(11): “(11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).”
- Further amend rule 4.410 and the corresponding advisory committee comment as follows:
  - To the rule, add paragraph (a)(8): “(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.”
  - To the advisory committee comment, before the last sentence of the comment, add: “Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety through a reduction in recidivism.”
- Further amend rule 4.433 as follows:
  - Add paragraph (a)(3), to read: “Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).”
  - Create paragraphs (e)(1)–(3) as follows:
    - Break current subdivision (e) into an introduction and a paragraph, to read:
      - (e) When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant:
        - (1) Under section 1170(c), of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation;
      - Add subdivision (e)(2) to read:
        - (2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or
      - Add subdivision (e)(3) to read:
        - (3) Of any period of mandatory supervision under section 1170(h)(5)(A) and (B), in addition to any period of imprisonment for a violation of mandatory supervision.
- Amend rule 4.472 by adding “4019” after “2933.2(c), and” in the first sentence.
- Make nonsubstantive amendments to the following rules and/or relevant portions of advisory committee comments: 4.403, 4.405, 4.409, 4.414, 4.421, 4.427, 4.431, and 4.433.

## **Presumption of mandatory supervision, rule 4.415**

### **Background**

Section 1170(h)(5)(A) was amended, effective January 1, 2015, to require courts to impose mandatory supervision for all felony terms of imprisonment in county jail unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Section 1170.3(a) was amended at the same time to require the Judicial Council to adopt rules of court to prescribe criteria for the court to consider in deciding whether to deny a period of mandatory supervision “in the interests of justice” under section 1170(h)(5)(A) and in determining the appropriate period and conditions of mandatory supervision. The Judicial Council adopted rule 4.415, effective July 1, 2015, in response.

The appellate court’s recent opinion in *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied October 21, 2015, held that courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

### **The Proposal**

The committee proposes amending rule 4.415 as follows to clarify this exception to the presumption of mandatory supervision:

- To the rule, add the following to the beginning of subdivision (a): “Except where the defendant is statutorily ineligible for suspension of any part of the sentence.”
- To the advisory committee comment, add the following after the last line of the second paragraph: “Under *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied, courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.”

## **Military information in probation officer’s presentence investigation report, rule 4.411.5**

### **Background**

Section 1170.9 directs that if a defendant convicted of a criminal offense alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. military, the court shall, before sentencing, make a determination about the allegations. If the court determines the allegations are true and the defendant is otherwise eligible for probation, the court must consider these circumstances as a factor in favor of granting probation. (Pen. Code, § 1170.9(a), (b)(1).)

### **The Proposal**

The proposal would amend rule 4.411.5 to require probation presentence reports to include relevant information about the defendant’s military service to facilitate the court’s

determinations under section 1170.9 by adding the following to the end of subdivision (a)(6): “Such facts include those relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service.”

### **Alternatives Considered**

The committee considered not proposing any changes to the rules at this time. But it determined that these amendments are appropriate because they are necessary to conform the rules with the Penal Code and in some cases required by recent legislation.

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

No implementation requirements or operational impacts are likely.

## **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?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480, at pages 7–20.

The California Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480, would be amended, effective January 1, 2017, to read:

### **Rule 4.403. Application**

These rules apply only to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170).

#### **Advisory Committee Comment**

The sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences for which sentence is imposed under section 1168(b).

The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison sentences, sentences in county jail under section 1170(h), and the grant or denial of probation. ~~Criteria dealing with jail sentences, fines, or jail time and fines as conditions of probation, would substantially exceed the mandate of the legislation.~~

### **Rule 4.405. Definitions**

As used in this division, unless the context otherwise requires:

(1)–(3) \* \* \*

(4) “Aggravation” or “circumstances in aggravation” means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b).

(5) “Mitigation” or “circumstances in mitigation” means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) or factors that may justify the court in striking the additional punishment for an enhancement when the court has discretion to do so.

(6)–(7) \* \* \*

(8) “Imprisonment” means confinement in a state prison or county jail under section 1170(h).

(9)–(10) \* \* \*

(11) “Mandatory supervision” means the period of supervision defined in section 1170(h)(5)(A), (B).

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- (12) “Postrelease community supervision” means the period of supervision governed by section 3451 et seq.
- (13) “Evidence-based practices” means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.
- (14) “Community-based corrections program” means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)–(5).
- (15) “Local supervision” means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.
- (16) “County jail” means local county correctional facility.

#### **Advisory Committee Comment**

“Base term” is the term of imprisonment selected under section 1170(b) from the three possible terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. 270 — [127 S.Ct. 856-], the Legislature amended the determinate sentencing law. (See Sen. Bill 40; Stats. 2007, ch. 3.) To comply with those changes, these rules were also amended. In light of those amendments, for clarity, the phrase “base term” in (4) and (5) was replaced with “one of the three authorized prison terms.” This language was subsequently changed to “three authorized terms of imprisonment” to incorporate county jail sentences under section 1170(h) in light of more recent legislative amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.) It is an open question whether the definitions in (4) and (5) apply to enhancements for which the statute provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an enhancement with three possible terms. The latter sections provide that “the court shall impose the middle term unless there are circumstances in aggravation or mitigation.” (See, e.g., section 1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement triad with the presumptive imposition of the middle term runs afoul of *Cunningham*. Because of this open question, rule 4.428(b) was deleted.

“Enhancement.” The facts giving rise to an enhancement, the requirements for pleading and proving those facts, and the court’s authority to strike the additional term are prescribed by statutes. See, for example, sections 667.5 (prior prison terms), 12022 (being armed with a firearm or using a deadly weapon), 12022.5 (using a firearm), 12022.6 (excessive taking or damage), 12022.7 (great bodily injury), 1170.1(e) (pleading and proof), and 1385(c) (authority to strike the additional punishment). Note: A consecutive sentence is not an enhancement. (See section 1170.1(a); *People v. Tassell* (1984) 36 Cal.3d 77, 90 [overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 401].)

“Sentence choice.” Section 1170(c) requires the judge to state reasons for the sentence choice. This general requirement is discussed in rule 4.406.

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“Imprisonment” in state prison or county jail under section 1170(h) is distinguished from confinement in other types of facilities.

“Charged” and “found.” Statutes require that the facts giving rise to all enhancements be charged and found. See section 1170.1(e).

Item (13), see sections 17.5(a)(9) and 3450(b)(9).

Item (15), see section 1229(e).

#### **Rule 4.406. Reasons**

(a) \* \* \*

#### **(b) When reasons required**

Sentence choices that generally require a statement of a reason include:

- (1) Granting probation;
- (2) Imposing a prison sentence or sentence in county jail under section 1170(h) and thereby denying probation;
- (3)–(8) \* \* \*
- (9) Not committing an eligible defendant to the California Rehabilitation Center;
- (10) Striking an enhancement or prior conviction allegation under section 1385(a); and
- (11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

#### **Rule 4.409. Consideration of criteria**

\* \* \*

#### **Advisory Committee Comment**

Relevant criteria are those applicable to the facts in the record of the case; not all criteria will be relevant to each case. The judge’s duty is similar to the duty to consider the probation officer’s report. Section 1203.

In deeming the sentencing judge to have considered relevant criteria, the rule applies the presumption of Evidence Code section 664 that official duty has been regularly performed. (See *People v. Moran* (1970) 1 Cal.3d 755, 762 (trial court presumed to have considered referring

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eligible defendant to California Youth Authority in absence of any showing to the contrary, citing Evidence Code section 664).]

**Rule 4.410. General objectives in sentencing**

**(a) General objectives of sentencing include:**

(1)–(5) \* \* \*

(6) Securing restitution for the victims of crime; ~~and~~

(7) Achieving uniformity in sentencing; and

(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

**(b)** \* \* \*

**Advisory Committee Comment**

Statutory expressions of policy include:

Welfare and Institutions Code section 1820 et seq., which provides partnership funding for county juvenile ranches, camps, or forestry camps.

Section 1203(b)(3), which requires that eligible defendants be considered for probation and authorizes probation if circumstances in mitigation are found or justice would be served.

Section 1170(a)(1), which expresses the policies of uniformity, proportionality of ~~prison~~ terms of imprisonment to the seriousness of the offense, and the use of imprisonment as punishment.

Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety through a reduction in recidivism.

Other statutory provisions that prohibit the grant of probation in particular cases.

**Rule 4.411.5. Probation officer’s presentence investigation report**

**(a) Contents**

A probation officer’s presentence investigation report in a felony case must include at least the following:

(1)–(5) \* \* \*

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- (6) Any relevant facts concerning the defendant’s social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, “Family,” “Education,” “Employment and income,” “Military,” “Medical/psychological,” “Record of substance abuse or lack thereof,” and any other relevant subheadings. This includes facts relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her U. S. military service.

(7)–(12) \* \* \*

(b)–(c) \* \* \*

**Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims**

(a) \* \* \*

**(b) Agreement to sentence abandons section 654 claim**

By agreeing to a specified term in prison or county jail under section 1170(h) term personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654’s prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.

**Rule 4.414. Criteria affecting probation**

Criteria affecting the decision to grant or deny probation include facts relating to the crime and facts relating to the defendant.

(a) \* \* \*

**(b) Facts relating to the defendant**

Facts relating to the defendant include:

(1) \* \* \*

- (2) Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole ~~and present probation or parole status;~~

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(3)–(8) \* \* \*

### Advisory Committee Comment

The sentencing judge’s discretion to grant probation is unaffected by the Uniform Determinate Sentencing Act (section § 1170(a)(3)).

The decision whether to grant probation is normally based on an overall evaluation of the likelihood that the defendant will live successfully in the general community. Each criterion points to evidence that the likelihood of success is great or small. A single criterion will rarely be determinative; in most cases, the sentencing judge will have to balance favorable and unfavorable facts.

Under criteria (b)(3) and (b)(4), it is appropriate to consider the defendant’s expressions of willingness to comply and his or her apparent sincerity, and whether the defendant’s home and work environment and primary associates will be supportive of the defendant’s efforts to comply with the terms of probation, among other factors.

### Rule 4.415. Criteria affecting the imposition of mandatory supervision

#### (a) Presumption

Except where the defendant is statutorily ineligible for suspension of any part of the sentence, when imposing a term of imprisonment in county jail under section 1170(h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.

(b)–(d) \* \* \*

### Advisory Committee Comment

Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe criteria for the consideration of the court at the time of sentencing regarding the court’s decision to “[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of subdivision (h) of Section 1170 or determine the appropriate period of and conditions of mandatory supervision.”

**Subdivision (a).** Penal Code section 1170(h)(5)(A): “Unless the court finds, in the interests of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the term for a period selected at the court’s discretion.” Under *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied, courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

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**Subdivisions (b)(3), (b)(4), and (c)(3) \* \* \***

**Subdivision (c)(7). \* \* \***

**Rule 4.420. Selection of term of imprisonment**

**(a) \* \* \***

**(b)** In exercising his or her discretion in selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.

**(c)-(d) \* \* \***

**(e)** The reasons for selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) must be stated orally on the record.

**Advisory Committee Comment**

The determinate sentencing law authorizes the court to select any of the three possible ~~prison~~ terms of imprisonment even though neither party has requested a particular term by formal motion or informal argument. Section 1170(b) vests the court with discretion to impose any of the three authorized ~~prison~~ terms of imprisonment and requires that the court state on the record the reasons for imposing that term.

It is not clear whether the reasons stated by the judge for selecting a particular term qualify as "facts" for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified, judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For example, the court is not permitted to use a reason to impose a greater term if that reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The court should not use the same reason to impose a consecutive sentence as to impose an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

The rule makes it clear that a fact charged and found as an enhancement may, in the alternative, be used as a factor in aggravation.

*People v. Riolo* (1983) 33 Cal.3d 223, 227 (and note 5 on 227) held that section 1170.1(a) does not require the judgment to state the base term (upper, middle, or lower) and enhancements,

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computed independently, on counts that are subject to automatic reduction under the one-third formula of section 1170.1(a).

Even when sentencing is under section 1170.1, however, it is essential to determine the base term and specific enhancements for each count independently, in order to know which is the principal term count. The principal term count must be determined before any calculation is made using the one-third formula for subordinate terms.

In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at an informed decision whether to make terms consecutive or concurrent; and the base term for each count must be stated in the judgment when sentences are concurrent or are fully consecutive (i.e., not subject to the one-third rule of section 1170.1(a)).

#### **Rule 4.421. Circumstances in aggravation**

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) \* \* \*

#### **(b) Factors relating to the defendant**

Factors relating to the defendant include that:

(1)–(2) \* \* \*

(3) The defendant has served a prior term in prison or county jail under section 1170(h) term;

(4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and

(5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

(c) \* \* \*

#### **Advisory Committee Comment**

Circumstances in aggravation may justify imposition of the upper of three possible ~~prison~~ terms of imprisonment. (Section 1170(b).)

The list of circumstances in aggravation includes some facts that, if charged and found, may be used to enhance the sentence. The rule does not deal with the dual use of the facts; the statutory prohibition against dual use is included, in part, in rule 4.420.

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Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a taking or loss of great value may be circumstances in aggravation even if not meeting the statutory definitions for enhancements.

Facts concerning the defendant's prior record and personal history may be considered. By providing that the defendant's prior record and simultaneous convictions of other offenses may not be used both for enhancement and in aggravation, section 1170(b) indicates that these and other facts extrinsic to the commission of the crime may be considered in aggravation in appropriate cases. This resolves whatever ambiguity may arise from the phrase "circumstances in aggravation . . . of the crime." The phrase "circumstances in aggravation or mitigation of the crime" necessarily alludes to extrinsic facts.

Refusal to consider the personal characteristics of the defendant in imposing sentence would also raise serious constitutional questions. The California Supreme Court has held that sentencing decisions must take into account "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society." *In re Rodriguez* (1975) 14 Cal.3d 639, 654, quoting *In re Lynch* (1972) 8 Cal.3d 410, 425. In *In re Rodriguez* the court released petitioner from further incarceration because "[I]t appears that neither the circumstances of his offense nor his personal characteristics establish a danger to society sufficient to justify such a prolonged period of imprisonment." (*Id.* at 655.) (Footnote omitted, emphasis added.) "For the determination of sentences, justice generally requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." (*Pennsylvania v. Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v. Georgia* (1976) 428 U.S. 153, 189.)

The scope of "circumstances in aggravation or mitigation" under section 1170(b) is, therefore, coextensive with the scope of inquiry under the similar phrase in section 1203.

The 1990 amendments to this rule and the comment included the deletion of most section numbers. These changes recognize changing statutory section numbers and the fact that there are numerous additional code sections related to the rule, including numerous statutory enhancements enacted since the rule was originally adopted.

Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion; cases in which that possible circumstance in aggravation was relied on were frequently reversed on appeal because there was only a single victim in a particular count.

Old age or youth of the victim may be circumstances in aggravation; see section 1170.85(b). Other statutory circumstances in aggravation are listed, for example, in sections 422.76, 1170.7, 1170.71, ~~1170.75~~, 1170.8, and 1170.85.

#### **Rule 4.423. Circumstances in mitigation**

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) \* \* \*

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**(b) Factors relating to the defendant**

Factors relating to the defendant include that:

(1)–(5) \* \* \*

(6) The defendant’s prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

**Rule 4.425. Criteria affecting concurrent or consecutive sentences**

Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

(a) \* \* \*

**(b) Other criteria and limitations**

Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

(1) \* \* \*

(2) A fact used to otherwise enhance the defendant’s sentence in prison or county jail under section 1170(h) sentence; and

(3) \* \* \*

**Rule 4.427. Hate crimes**

(a) \* \* \*

**(b) Felony sentencing under section 422.7**

If one of the three factors listed in section 422.7 is pled and proved, a misdemeanor conviction that constitutes a hate crime under section 422.55 may be sentenced as a felony. The punishment is imprisonment in state prison or county jail under section 1170(h) as provided by section 422.7.

(c)–(e) \* \* \*

**Rule 4.431. Proceedings at sentencing to be reported**

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\* \* \*

### Advisory Committee Comment

Reporters' transcripts of the sentencing proceedings are required on appeal (rule ~~8.420~~ 8.320, except in certain cases under subdivision (d) of that rule), and when the defendant is sentenced to prison (section 1203.01).

#### **Rule 4.433. Matters to be considered at time set for sentencing**

- (a) In every case, at the time set for sentencing under section 1191, the sentencing judge must hold a hearing at which the judge must:
- (1) Hear and determine any matters raised by the defendant under section 1201; ~~and~~
  - (2) Determine whether a defendant who is eligible for probation should be granted or denied probation, unless consideration of probation is expressly waived by the defendant personally and by counsel; and
  - (3) Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).
- (b) If the imposition of a sentence is to be suspended during a period of probation after a conviction by trial, the trial judge must identify and state circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) if probation is later revoked. The circumstances identified and stated by the judge must be based on evidence admitted at the trial or other circumstances properly considered under rule 4.420(b).
- (c) If a sentence of imprisonment is to be imposed, or if the execution of a sentence of imprisonment is to be suspended during a period of probation, the sentencing judge must:
- (1) Determine, under section 1170(b), whether to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) and state on the record the reasons for imposing that term;:
  - (2)–(5) \* \* \*
- (d) \* \* \*

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(e) When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant;

- (1) Under section 1170(c), of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation;
- (2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or
- (3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A)(B), in addition to any period imprisonment for a violation of mandatory supervision.

#### **Advisory Committee Comment**

This rule summarizes the questions that the court is required to consider at the time of sentencing, in their logical order.

Subdivision (a)(2) makes it clear that probation should be considered in every case, without the necessity of any application, unless the defendant is statutorily ineligible for probation.

Under subdivision (b), when imposition of sentence is to be suspended, the sentencing judge is not to make any determinations as to possible length of a ~~prison~~ term of imprisonment on violation of probation (section 1170(b)). If there was a trial, however, the judge must state on the record the circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment based on the trial evidence.

Subdivision (d) makes it clear that all sentencing matters should be disposed of at a single hearing unless strong reasons exist for a continuance.

#### **Rule 4.435. Sentencing on revocation of probation**

(a) \* \* \*

(b) On revocation and termination of probation under section 1203.2, when the sentencing judge determines that the defendant will be committed to prison or county jail under section 1170(h):

(1) \* \* \*

(2) If the execution of sentence was previously suspended, the judge must order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Secretary of the Department

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of Corrections and Rehabilitation or local county correctional administrator or sheriff for the term prescribed in that judgment.

#### **Advisory Committee Comment**

Subdivision (a) makes it clear that there is no change in the court's power, on finding cause to revoke and terminate probation under section 1203.2(a), to continue the defendant on probation.

The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652: "[T]he primary term must reflect the circumstances existing at the time of the offense."

A judge imposing a ~~prison sentence~~ imprisonment on revocation of probation will have the power granted by section 1170(d) to recall the commitment on his or her own motion within 120 days after the date of commitment, and the power under section 1203.2(e) to set aside the revocation of probation, for good cause, within 30 days after the court has notice that execution of the sentence has commenced.

Consideration of conduct occurring after the granting of probation should be distinguished from consideration of preprobation conduct that is discovered after the granting of an order of probation and before sentencing following a revocation and termination of probation. If the preprobation conduct affects or nullifies a determination made at the time probation was granted, the preprobation conduct may properly be considered at sentencing following revocation and termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.)

#### **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**

If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

(1)–(2) \* \* \*

(3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include the decision to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement.

#### **Rule 4.472. Determination of presentence custody time credit**

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under sections 2900.5, 2933.1(c), ~~and~~ 2933.2(c) and 4019. On referral of the defendant to the probation

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officer for an investigation and report under section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

**Rule 4.480. Judge’s statement under section 1203.01**

A sentencing judge’s statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records.

The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge’s statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports.

If a section 1203.01 statement is prepared, it should be submitted no later than two weeks after sentencing so that it may be included in the official Department of Corrections and Rehabilitation, Division of Adult Operations case summary that is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections and Rehabilitation, Division of Adult Operations.

*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.*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Revise Petition and Order for Dismissal, forms CR-180 and CR-181

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961, eve.hershcopf@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 2015

Project description from annual agenda:

Item 3: Recommend Judicial Council approval of various rule and form proposals to promote timely, consistent, and effective criminal case processing, including revisions to dismissal and criminal protective order forms.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

SPR16-\_\_

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Title	Action Requested
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-180 and CR-181	January 1, 2017
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 <a href="mailto:eve.hershcopf@jud.ca.gov">eve.hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) in response to recent legislation that provides dismissal relief for defendants who were granted deferred entry of judgment on or after January 1, 1997, who successfully completed a deferred entry of judgment program, and for whom the criminal charge(s) were dismissed under Penal Code section 1000.3 The committee also proposes minor revisions to the format of both forms to improve their usefulness for courts and petitioners.

### Background

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, 1203.41 and 1203.49.<sup>1</sup> These are two of the most heavily used optional criminal law forms and are frequently submitted by unrepresented petitioners.

Recent legislation added section 1203.43 to authorize a defendant who was granted deferred entry of judgment on or after January 1, 1997, to petition the court for dismissal relief.<sup>2</sup> Under section 1203.43, the court is required to permit a petitioner (the defendant in the underlying

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> [Assem. Bill 1352 \[Eggman\]; Stats. 2015, ch. 646.](#)

*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.*

criminal action) who performed satisfactorily during the period in which deferred entry of judgment was granted, and who had the criminal charge(s) dismissed under section 1000.3, to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty; the statute then requires the court to dismiss the complaint or information. The court's determination of the petitioner's eligibility for relief may be based on available court records showing the case resolution. If court records are no longer available, under new section 1203.43, the petitioner's declaration under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment shall be presumed to be true if the petitioner submits a copy of his or her state summary criminal history information that shows that the petitioner successfully completed the deferred entry of judgment program or that the record does not show a final disposition.

### **The Proposal**

The Criminal Law Advisory Committee proposes adding the following items to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to incorporate the new basis for relief established by section 1203.43:

- A reference to section 1203.43 to the caption and footer of both forms;
- The phrase “or was granted deferred entry of judgment for the following offenses” to item 1 on form CR-180;
- New item 6 to form CR-180, including check boxes and related instructions, to facilitate requests for dismissal under section 1203.43;
- A check box for section 1203.43 to the request for relief in item 8 of form CR-180, and a reference to a plea of nolo contendere;
- Check boxes to items 3 and 4 on form CR-181 for courts to grant or deny dismissal relief under section 1203.43; and
- References to pleas for deferred entry of judgment and pleas of nolo contendere in items 3 and 4 on form CR-181, and removing the phrase “regarding the following convictions” from both items.
- Minor revisions to the format of both forms to improve their usefulness for courts and petitioners.

The proposed revised forms are attached at pages 4–7.

### **Alternatives Considered**

The committee considered the potential burdens that any form change may place on the courts. [AH1] The committee, however, determined that these revisions are appropriate because they are

required by recent legislation and would reduce confusion, promote efficiencies, and facilitate court implementation of new criminal procedures.

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

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

## **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?
- Are the proposed revisions an effective way to address the legislation that added Penal Code section 1203.43?

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. Proposed revised forms CR-180 and CR-181, at pages 4–7
2. Link A: [Assem. Bill 1352 \[Eggman\]; Stats. 2015, ch. 646](#)

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>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
<b>PETITION FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)</b>	<b>FOR COURT USE ONLY</b> Date: Time: Department:

1. On (date): \_\_\_\_\_, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses **or was granted deferred entry of judgment** for the following offenses:

Code	Section	Type of offense: ( <i>Felony; Misdemeanor; Infraction</i> )	Eligible for reduction to misdemeanor under Penal Code § 17(b) ( <i>Yes or No</i> )	Eligible for reduction to infraction under Penal Code § 17(d)(2) ( <i>Yes or No</i> )

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2.  **Felony or misdemeanor with probation granted (*Pen. Code, § 1203.4*)**  
 Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*)
- a.  has fulfilled the conditions of probation for the entire period thereof.
  - b.  has been discharged from probation prior to the termination of the period thereof.
  - c.  should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)
3.  **Misdemeanor or infraction with sentence other than probation (*Pen. Code, § 1203.4a*)**  
 Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime, and the petitioner (*check one*)
- a.  has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land.
  - b.  should be granted relief in the interests of justice. (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.*)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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4.  **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**
- a. The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).
  - b. The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5.  **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**
- The petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and *(check one)*
- a.  more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B).
  - b.  more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).
- (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)*

6.  **Deferred entry of judgment (Pen. Code, § 1203.43)**
- Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under Penal Code section 1000.3 on: *(date):* \_\_\_\_\_ Furthermore *(check one)*
- a.  court records are available showing the case resolution.
  - b.  petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, and petitioner has attached a copy of his or her state summary criminal history information maintained by the Department of Justice.

7. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

8. Petitioner requests that he **or** she be permitted to withdraw the plea of guilty **or nolo contendere**, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section  1203.4,  1203.4a,  1203.41,  **1203.43**, or  1203.49 of the Penal Code.

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

**Date:** \_\_\_\_\_  (SIGNATURE OF PETITIONER OR ATTORNEY)

\_\_\_\_\_  
(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)

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>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
<b>ORDER FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)</b>	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner (the defendant in the above-entitled criminal action) is eligible for the following requested relief:

- The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions (*check one*)
  - ALL FELONY CONVICTIONS in the above-entitled action.
  - ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
  - only the following convictions in the above-entitled action (*specify charges and date of conviction*):

- The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for (*check one*)
  - ALL FELONY CONVICTIONS in the above-entitled action.
  - ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
  - only the following convictions in the above-entitled action (*specify charges and date of conviction*):

- The court **GRANTS** the petition for dismissal under Penal Code  § 1203.4,  § 1203.4a,  § 1203.41,  § 1203.43, or  § 1203.49, and it is ordered that the pleas of guilty or nolo contendere, or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
  - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
  - only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

- The court **DENIES** the petition for dismissal under Penal Code  § 1203.4,  § 1203.4a,  § 1203.41,  § 1203.43, or  § 1203.49 for (*check one*)
  - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
  - only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- 5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders **(check one)**
  - a.  the relief described in section 1203.4.
  - b.  the relief described in section 1203.4, with the following exceptions (*specify*):
  
- 6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
  - a. The petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
  - b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)
  
- 7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.
  
- 8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
  
- 9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

<i>FOR COURT USE ONLY</i>
---------------------------

Date:

\_\_\_\_\_

(JUDICIAL OFFICER)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Amend CRC 10.491

*Committee or other entity submitting the proposal:*

CJER Governing Committee

*Staff contact (name, phone and e-mail):* Bob Lowney | 415-865-7833 | [bob.lowney@jud.ca.gov](mailto:bob.lowney@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: N/A

Project description from annual agenda: N/A

*If requesting July 1 or out of cycle, explain:*

N/A

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

N/A

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Judicial Branch Education: Minimum Requirements for Judicial Council Staff	Review and submit comments by [deadline]
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.491	January 1, 2017
Proposed by	Contact
Diane Cowdrey, Director CJER	Bob Lowney <a href="mailto:bob.lowney@jud.ca.gov">bob.lowney@jud.ca.gov</a>   415.865.7833

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### Executive Summary and Origin

Rule 10.491 addresses education for Judicial Council staff. The overarching goal of amending rule 10.491 is to enable Judicial Council staff to more effectively fulfill their education requirements by eliminating administrative elements that do not directly bear on education, adding flexibility that better reflects the structure and operation of the Judicial Council staff office, and streamlining use of the learning management system, HREMS. The CJER Governing Committee recommends these amendments, which are supported by the Administrative Director.

### The Proposal

Rule 10.491 outlines the education requirements for all Judicial Council staff, including the time frames for fulfilling those requirements, and certain administrative responsibilities, such as maintaining records of participation. The rule has a complex model regarding the education requirements which categorizes staff as new, experienced, and newly promoted to management, that can, at times, be counter-productive.

For example, newly hired employees must complete specific courses while experienced ones must complete a minimum number of general education hours during each two-year education period. New employees cannot earn education hours until they complete those specified courses and are reclassified as experienced. As a result, any other education taken prior to completing the required new employee courses will not count toward education hours once the employee is reclassified. This prohibition on new employees earning education hours is actually a disincentive to take relevant education that would enhance their overall performance.

*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.*

Under the proposed amended rule, new employees must still complete the required courses within specified time frames but the current distinction between new and experienced employees would otherwise largely disappear, thereby greatly simplifying how education hours are calculated. New employees would earn credit for any appropriate education immediately upon hire and the courses required as new employees would also count towards those credit hours. There would be no re-categorizing of an employee from new to experienced with the attendant recalculation of pro rata education hours due for the remainder of an education period.

Under the proposed rule, the current distinction between live face-to-face education and distance mediated education, and hourly limits for the latter, would be eliminated. Judicial Council staff could fulfill their education requirements using any form of education they chose that their supervisors approve.

Under the current rule, staff, management, and executive employees all have different education hour requirements. Under the proposed revision, all staff, regardless of administrative level, would have ten education hours to complete per year. This amendment acknowledges that professional development is equally critical for all staff regardless of position within the organization.

The current rule also contains several administrative responsibilities in subsections (d), (e), and (f), such as how management must permit employees sufficient time to complete their education, how time extensions may be granted, how records of participation must be maintained, and employees should be encouraged to participate as faculty and develop education plans. These administrative responsibilities, which are not germane to the substance of the education rule, have been eliminated and will be drafted as separate guidelines to accompany the rule. These guidelines will be prominently located in the web page devoted to Judicial Council staff education.

These revisions preserve the overall education requirements for Judicial Council staff while greatly streamlining the procedures and increasing flexibility for administrative aspects of the rule, such as fulfilling the education hours requirement. The revision also reduces Judicial Council staff time to operate and maintain the learning management system, especially to combine and calculate individual and group employee education hours.

### **Alternatives Considered**

The CJER Governing Committee also considered completely revising HREMS, the learning management system which is used to maintain the administrative components of the rule, to more efficiently and effectively administer staff records. The committee concluded that system revisions would be costly and labor intensive yet highly unlikely to overcome many of the current rule's complexities. The final analysis determined the proposed rule amendment would be the most effective method to correct the rule's current deficiencies and introduce efficiencies.

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

One-time implementation costs would include minor adjustments to the learning management system to remove several employee categories and other administrative functions, which simplify the software computations required to manage the Judicial Council education program. These changes would, almost immediately, make HREMS more responsive to the administrative needs of Judicial Council staff and the offices charged with managing its education program, specifically the Center for Judicial Education and Research, Information Technology, and Human Resources. Other one-time costs would include communicating the changes and their impact on education requirements and possibly minor training on the new paradigm.

### **Attachments**

Cal. Rules of Court, rule 10.491, at pages 4–7

Rule 10.491 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 10.491. Minimum education requirements for Judicial Council ~~executives,~~**  
2 **~~managers, supervisors, and other employees~~**

3  
4 (a) **Applicability**

5  
6 Orientation and ongoing professional development for Judicial Council staff  
7 enables them to effectively provide service, leadership and expertise to the courts  
8 and to enhance trust and confidence in the judicial branch. All Judicial Council  
9 ~~executives, managers, supervisors, and other employees~~ must complete these  
10 minimum education requirements. These education requirements are included as a  
11 part of the employee performance evaluation process.

12  
13 (b) ~~Content-based requirements~~ **Education requirements for new hires and**  
14 **appointments**

15  
16 (1) ~~Each new manager or supervisor must complete the New~~  
17 ~~Manager/Supervisor Orientation within six months of being hired or assigned~~  
18 ~~as a manager or supervisor. Each new employee with supervisory or~~  
19 ~~management responsibilities must complete the New Manager/Supervisor~~  
20 ~~Orientation within six months of being hired or appointed or as soon as~~  
21 ~~possible after being hired or appointed.~~

22  
23 (2) ~~Each new employee, including each new manager or supervisor, must~~  
24 ~~complete New Employee Orientation within six months of being hired and~~  
25 ~~should complete it as soon as possible after being hired. All new Judicial~~  
26 ~~Council employees, including those in management, must complete the New~~  
27 ~~Employee Orientation within six months of being hired or as soon as possible~~  
28 ~~after being hired.~~

29  
30 (3) ~~The Administrative Director may require new managers, supervisors, and~~  
31 ~~other employees to complete specific compliance courses in addition to the~~  
32 ~~required orientation courses. Completion of these two orientation courses~~  
33 ~~counts towards the education hours requirements in (c), below.~~

34  
35 (c) ~~Hours-based requirements~~ **Education requirements for Judicial Council**  
36 **employees**

37  
38 (1) ~~Each executive must complete 30 hours of continuing education every two~~  
39 ~~years. All Judicial Council employees must complete 20 hours of education~~  
40 ~~every two years, beginning on January 1, 2017.~~

41 (2) For new hires beginning employment after July 1 of any year, the education  
42 hours may be pro-rated for that year at the discretion of the employee's  
43 supervisor.

44 (3) ~~Each manager or supervisor must complete 18 hours of continuing education~~  
45 ~~every two years. The Administrative Director may require Judicial Council~~  
46 ~~employees to complete specific compliance courses or specific courses for~~

1 management. This compliance education will count towards fulfilling the 20  
2 hours requirement in (c)(1) on an hour-for-hour basis.

- 3
- 4 (4) ~~Each employee who is not an executive, manager, or supervisor must~~  
5 ~~complete 12 hours of continuing education every two years. Education~~  
6 ~~offered by an approved provider described in rule 10.481(a), as well as~~  
7 ~~education that is approved by the employee's supervisor as meeting the~~  
8 ~~criteria listed in rule 10.481(b), applies toward the employee's education~~  
9 ~~requirements.~~
- 10
- 11 (5) Education can be taken live face-to-face or via distance such as webinars,  
12 online courses, broadcasts, etc.
- 13
- 14 (6) ~~The orientation courses and the compliance courses required for new~~  
15 ~~managers, supervisors, and other employees under (b) do not apply toward~~  
16 ~~the required hours of continuing education. Each new executive enters the~~  
17 ~~two-year continuing education period on the first day of the quarter following~~  
18 ~~his or her appointment, and each new manager, supervisor, and employee~~  
19 ~~enters the two-year continuing education period on the first day of the quarter~~  
20 ~~following the six-month period provided for his or her completion of the~~  
21 ~~orientation courses and the compliance courses required under (b); the~~  
22 ~~quarters begin on January 1, April 1, July 1, and October 1. Each executive,~~  
23 ~~manager, supervisor, or employee who enters the two-year continuing~~  
24 ~~education period after it has begun must complete a prorated number of~~  
25 ~~continuing education hours for that two-year period, based on the number of~~  
26 ~~quarters remaining in it. Participation in education, both as a learner or as~~  
27 ~~faculty, counts towards the employee's education requirements under this~~  
28 ~~rule on an hour-for-hour basis.~~
- 29
- 30 (5) ~~Any education offered by an approved provider (see rule 10.481(a)) and any~~  
31 ~~other education, including education taken to satisfy a statutory, rules-based,~~  
32 ~~or other education requirement, that is approved by the employee's~~  
33 ~~supervisor as meeting the criteria listed in rule 10.481(b) applies toward the~~  
34 ~~continuing education required under (c)(1)–(3).~~
- 35
- 36 (6) ~~Each hour of participation in traditional (live, face-to-face) education;~~  
37 ~~distance education such as broadcasts, videoconference courses, and online~~  
38 ~~coursework; and faculty service counts toward the requirement on an hour-~~  
39 ~~for-hour basis. The Administrative Director or an executive, manager, or~~  
40 ~~supervisor, if delegated by the Administrative Director, has discretion to~~  
41 ~~determine the number of hours, if any, of traditional (live, face-to-face)~~  
42 ~~education required to meet the continuing education requirement.~~
- 43
- 44 (7) ~~An executive, manager, supervisor, or employee who serves as faculty by~~  
45 ~~teaching legal or judicial education to a legal or judicial audience may apply~~  
46 ~~education hours as faculty service. Credit for faculty service counts toward~~

1 the continuing education requirement in the same manner as all other types of  
2 education — on an hour for hour basis.

3  
4 ~~(8) — The Administrative Director of the Courts may require executives, managers,~~  
5 ~~supervisors, and other employees to complete specific AOC compliance~~  
6 ~~courses as part of the continuing education requirements.~~

7  
8 **~~(d) — Extension of time~~**

9  
10 ~~(1) — For good cause, the Administrative Director or an executive, manager, or~~  
11 ~~supervisor, if delegated by the Administrative Director, may grant a one-year~~  
12 ~~extension of time to complete the education requirements in this rule. If an~~  
13 ~~extension is granted, the subsequent two-year compliance period begins~~  
14 ~~immediately after the extended compliance period ends, unless otherwise~~  
15 ~~determined by the Administrative Director.~~

16  
17 ~~(2) — If the Administrative Director, or an executive, manager, or supervisor,~~  
18 ~~grants a request for an extension of time, the individual who made the~~  
19 ~~request, in consultation with the Administrative Director or the individual's~~  
20 ~~supervisor, must also pursue interim means of obtaining relevant educational~~  
21 ~~content.~~

22  
23 **~~(e) — Records of participation~~**

24  
25 ~~(1) — An employee's completion of any course listed in the learning management~~  
26 ~~system is automatically tracked.~~

27  
28 ~~(2) — An employee's completion of specified online training is automatically~~  
29 ~~tracked as well.~~

30  
31 ~~(3) — Each employee is responsible for tracking completion of any training that is~~  
32 ~~not automatically tracked in the learning management system. After~~  
33 ~~completion of the training, the employee must enter it in the employee's~~  
34 ~~individual record in the learning management system.~~

35  
36 **~~(f) — Responsibilities of Administrative Director and of Judicial Council executives,~~**  
37 **~~managers, and supervisors~~**

38  
39 ~~The Administrative Director and each Judicial Council executive, manager, and~~  
40 ~~supervisor:~~

41  
42 ~~(1) — Must grant sufficient time to all employees to enable them to complete the~~  
43 ~~minimum education requirements stated in (b) – (e);~~

44 ~~(2) — Should allow and encourage employees, in addition to participating as~~  
45 ~~students in education activities, to serve on employee education committees~~

1 and as faculty at judicial branch education programs when an employee's  
2 services have been requested for these purposes;

3  
4 ~~(3) Should establish an education plan for their employees to facilitate their~~  
5 ~~involvement as both participants and faculty in educational activities, and~~  
6 ~~should consult with each employee regarding his or her education needs and~~  
7 ~~requirements and professional development; and~~

8  
9 ~~(4) Must ensure that executives, managers, supervisors, and other employees are~~  
10 ~~reimbursed in accordance with the travel policies issued by the Judicial~~  
11 ~~Council for travel expenses incurred in attending in-state education programs~~  
12 ~~as a participant in order to complete the minimum education requirements in~~  
13 ~~(b) (c). Provisions for these expenses must be part of the Judicial Council's~~  
14 ~~budget. The Administrative Director may approve reimbursement of travel~~  
15 ~~expenses incurred by executives, managers, supervisors, and other employees~~  
16 ~~in attending out-of-state education programs as participants.~~

17  
18 **Advisory Committee Comment**

19  
20 The time frame for completion of compliance courses based on statutory or regulatory mandates  
21 is unaffected by the one-year extension in (d)(1).

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 14, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Trial Courts: Financial Policies and Procedures

*Committee or other entity submitting the proposal:*

Judicial Council staff

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: NA

Project description from annual agenda: This proposal is not from an advisory committee.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Trial Courts: Financial Policies and Procedures	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.804	January 1, 2017
Proposed by	Contact
Judicial Council staff	Susan R. McMullan, 415-865-7990
Doug Kauffroath, Director	<a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>
Trial Court Administrative Services	
Deborah Brown, Chief Counsel	
Legal Services	

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### Executive Summary and Origin

Judicial Council staff recommends that rule 10.804 of the California Rules of Court, concerning the *Trial Court Financial Policies and Procedures Manual*, be amended to remove the reference to policies and procedures for procurement and contracting by superior courts; describe the content and purpose of the manual; and describe the amendments to the manual that must be circulated for comment. Currently the rule provides that the manual must include policies and procedures for procurement and contracting by superior courts. These policies and procedures, however, are now contained in the *Judicial Branch Contracting Manual*.

### Background

Effective January 1, 2001, the Judicial Council adopted rule 10.804 (then numbered 6.707) of the California Rules of Court, which required staff to the council to adopt a financial policies and procedures manual for the trial courts. The need for the Trial Court Financial Policies and Procedures Manual arose following enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Statutes 1997, ch. Chapter 850), which provided for state funding of the trial courts, removing from counties the responsibility for budget control and financial management of trial courts. The manual was developed to assist trial courts in performing the fiscal management services formerly provided by the counties.

*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.*

Among the policies and procedures set out in the manual are those for procurement and contracting. On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law. It required the Judicial Council to adopt and publish a *Judicial Branch Contracting Manual* incorporating procurement and contracting policies and procedures that judicial branch entities, including trial courts, must follow. With the council's adoption of the *Judicial Branch Contracting Manual* on August 26, 2011, the need to include in the *Trial Court Financial Policies and Procedures Manual (TCFPPM)* policies and procedures addressing procurement and contracting by superior courts was eliminated.

### **The Proposal**

The proposal would delete reference to “policies and procedures for procurement and contracting by superior courts” and the description of the limitations on those policies and procedures in subdivision (a). It would add that the *TCFPPM* contains regulations establishing budget procedures and recordkeeping and include the following language from the manual that more fully describes its content and purpose: The manual sets out a system of fundamental internal controls that will enable the trial courts to monitor their use of public funds, provide consistent and comparable financial statements and demonstrate accountability.

In addition, subdivision (b) would be amended to provide that substantive amendments to the *TCFPPM* must be available to the superior courts, the California Department of Finance, and the State Controller's Office for 30 days for comment. Currently the rule provides that any amendments—technical corrections or substantive changes—be made available for comment by those entities. Under Government Code section 77202(c)(3), however, the council is obligated to consult courts only about proposed changes to policies on budget monitoring and reporting, a type of substantive change. The amendment would provide for comments by courts and the other listed entities on changes to policies that address topics beyond budget monitoring and reporting, but not on nonsubstantive changes. This will permit corrections and clarifications to be made in a timely manner. To specifically provide for this, subdivision (b)(2) would be added to state that the Administrative Director has authority delegated by the council, under article VI, section 6 of the California Constitution and other applicable law, to make technical changes and clarifications to the manual, provided the changes and clarifications are consistent with council policies.

### **Alternatives Considered**

Because certain provisions of rule 10.804 are currently inaccurate and out of date, as described above, no alternatives were considered.

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

No implementation requirements, costs, or operational impacts are expected. The amendments will more accurately describe court operations by removing the statement that policies and procedures for procurement and contracting by superior courts are contained in the *TCFPPM*.

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

The proponents also seek 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?

### **Attachments**

Cal. Rules of Court, rule 10.804, at page 4

Rule 10.804 of the California Rules of Court would be amended, effective January 1, 2017 to read:

1 **Rule 10.804. Superior court financial policies and procedures**

2  
3 **(a) Adoption of financial policies and procedures by the Judicial Council**

4  
5 As part of its responsibility for regulating the budget and fiscal management of the trial courts,  
6 the Judicial Council adopts ~~the~~ *Trial Court Financial Policies and Procedures Manual*. The  
7 manual contains regulations establishing budget procedures, recordkeeping, ~~must be consistent~~  
8 with the rules of court and policies adopted by the Judicial Council and ~~must include~~ accounting  
9 standards, and other financial guidelines for superior ~~the~~ trial courts, and ~~policies and procedures~~  
10 for procurement and contracting by superior courts. These policies and procedures must not  
11 modify superior courts' existing authority to procure, contract for, or use goods or services or the  
12 requirement that a court have authorized funding available in order to procure or contract for any  
13 good or service. The manual sets out a system of fundamental internal controls that will enable  
14 the trial courts to monitor their use of public funds, provide consistent and comparable financial  
15 statements, and demonstrate accountability.

16  
17 **(b) Amendments ~~Comment period for financial policies and procedures~~**

18  
19 (1) Before ~~amending~~ making any substantive amendments to the *Trial Court Financial*  
20 *Policies and Procedures Manual*, the Judicial Council must make ~~it~~ the  
21 amendments available to the superior courts, the California Department of Finance,  
22 and the State Controller's Office for 30 days for comment.

23  
24 (2) The Judicial Council delegates to the Administrative Director, under article VI,  
25 section 6 of the California Constitution and other applicable law, the authority to  
26 make technical changes and clarifications to the manual, provided the changes and  
27 clarifications are consistent with council policies.

28  
29 **(c) ~~Date of adherence to financial policies and procedures~~**

30  
31 Superior courts must adhere to the requirements contained in the *Trial Court Financial Policies*  
32 *and Procedures Manual*, except as otherwise provided in the manual. Superior courts must not  
33 be required to adhere to any substantive amendment to the manual sooner than 60 days after the  
34 amendment is adopted.

35 **Judicial Council Comment**

36 **Subdivision (a).** Procurement and contracting policies and procedures for judicial branch entities,  
37 including superior courts, are addressed separately in the *Judicial Branch Contracting Manual*, which the  
38 Judicial Council adopted under Public Contract Code section 19206.