

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR11-20**

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Title	Action Requested
Civil Law: Rule and Forms for Expedited Hearings on Petitions for Relief from Financial Obligations During Active Military Service	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes Adopt Cal. Rule of Court, rule 3.1372; and approve forms MIL-010, MIL-015, and MIL-020	Proposed Effective Date January 1, 2012
Proposed By Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Contact Anne Ronan 415-865-8933 anne.ronan@jud.ca.gov

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### Summary

This proposal is for a new rule and new forms to assist service members seeking relief under the Military and Veterans Code. California law provides that when members of the National Guard or the United States Military Reserves are called to active military service, they may seek relief from financial obligations during their time in service and up to six months after their return. (Mil. & Vet. Code §§400 et seq.) Assembly Bill 2365 recently amended, among other things, Military and Veterans Code section 409.3 to provide that petitions for such relief must be heard within 25 days of filing. (Assembly Bill 2365 [Lieu]; Stats. 2010, ch. 385.) The proposed forms and procedures will enable service members more effectively to file petitions for relief under the amended law.

### Discussion

#### Background

California law provides that members of the National Guard or reserves who are called for active duty may be temporarily relieved from financial obligations in situations where their active duty materially impacts their ability to pay such obligations. (Mil. & Vet. Code § 409.3.) Service members seeking to obtain such relief have had problems having their petitions heard and acted

*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 These proposals are circulated for comment purposes only.*

on in the short time between when the service member is called to active duty and when he or she has to leave home. As a result, Assembly Bill 2365 amended the statute to provide that courts must set hearings on such petitions for relief within 25 days of filing. (Mil. & Vet. Code § 409.3(b).) The amendment also requires that service of the petition be completed at least 10 days before the hearing date, with any opposition due five days before the hearing. (Ibid.) No filing fees shall be imposed on these filings. (Mil. & Vet. Code § 409.3(c).) The new rule and forms have been developed to assist service members in filing such petitions and courts in handling them.

## **The Proposal**

### ***Rule 3.1372: Petition for relief from financial obligations during military service***

Military and Veterans Code section 409.3. provides for *when* the petition for temporary relief for service members must be served, but not in what manner. Proposed rule 3.1372 provides that the petition be served in the manner of a summons in a civil action. The proposed rule also contains a provision that memorandums in support or opposition are not required.

### ***New Forms: Notice and Petition, Declaration, and Order***

Proposed *Notice of Petition and Petition for Relief from Financial Obligations During Military Service* (form MIL-010) starts with a notice to the respondent of the time and place of the hearing. It includes instruction that this information is to be completed by the clerk, who is to set the hearing within 25 days of filing. It also provides notice to the respondent that any response must be filed and served no later than five days before the hearing date.

The body of the petition includes statements as to the petitioner's status (membership in the reserves plus called to active duty, on active duty, or within 6 months of completing active duty); as to the type of financial obligation petitioner has to respondent; that the obligation is not one for child support (with an instruction directing him or her to the appropriate form for seeking modification of such an obligation); that the military service has materially affected petitioner's ability to pay the obligation; and that facts supporting the statements in the petition are included on the declaration filed with it.<sup>1</sup> The petition also includes a prayer for relief, based on the language in Military and Veterans Code section 409.3(d)(1) and (2).

Proposed *Declaration in Support of Petition for Relief From Financial Obligations During Military Service* (form MIL-015), to be signed under penalty of perjury, has items to provide factual support for each of the elements required for the court to grant the petition for relief: membership in the National Guard or federal reserve; military status (to be supported by a copy of the military orders or certificate from an authorized officer); a detailed description of the financial liability or obligation from which relief is sought (to be supported with documentation in the form of bills, mortgage statement, etc.); and facts showing why the ability to pay those obligations has been materially affected by military service (also to be supported by documents,

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<sup>1</sup> The items in the petition and other forms reflect the provisions currently in Military and Veterans Code section 409.3. A bill has been introduced that would make minor changes to that statute. (See Assembly Bill 713.) Should that bill be enacted, the forms will be revised to reflect any changes to the law.

if available). Each type of documentary support has been assigned an exhibit number: Exhibit A for evidence of active military service, Exhibit B for evidence of financial obligation, and Exhibit C for evidence of financial problems.

Proposed *Order on Petition for Relief from Financial Obligations During Military Service* (form MIL-020) has items for when and where a hearing occurred, for findings by the court as to appropriate military status (or the lack thereof), and whether the petitioner's military service has or has not materially affected petitioner's ability to pay the financial obligation to respondent. A blank item for any other findings the court may make is also included. The order section provides for denial or granting of the petition. If granted, there are several items on the form in which to describe the relief granted.

Item 6a provides a place for the court to order that an obligation is to be deferred. It includes space for a detailed description of the obligation being deferred; the date on which deferral begins (beginning of active duty) and the date on which it is to end (date of release from active duty, which will be included in the service member's military orders). This date is not always the actual date of release—a service member may be released sooner for various reasons. Hence, the order also includes a mandate to the service member that, should he or she be released sooner, the service member must tell the respondent and begin making payments again on the first of the month following release.

Item 6b provides a place for the court to order for extension of the maturity date of an obligation that is paid in installment payments for a period equal to the amount of time that the petitioner was on active duty, relief provided under section 409.3(d)(1) and (2). This relief may be granted in addition to a deferral during active duty service, in which case the dates of active duty are already set forth in item 6(a). This deferral may also be granted to a service member who applies within six months of release from active duty, in which case the dates of active service will need to be added here. That information can be included under "other terms."

Item 6c provides for deferral on obligations not requiring installment payments. The statute is somewhat ambiguous in that, although it purports to distinguish between obligations regarding property to be paid in installments (§ 409.3(d)(1)) and "any other obligation, liability, tax or assessment" (§ 409.3(d)(2)), the provisions regarding "other" obligations in subdivision (d)(2), like those in (d)(1), address obligations with installment payments. The provisions in subdivision (d)(2) imply that all deferred financial obligations will, for example, have rates of interest stated in the terms. It is not clear how a court will apply the relief provided for in this subdivision to obligations such as property taxes, insurance premiums, or court judgments which do not include terms for payments over time. Hence, item 6c has been drafted to provide options for a court deferring obligations that are not under installment contracts: it may require payment in a lump sum at the end of the deferral period, allow payments over a period of time with interest accruing at a rate to be set by the court, or order other terms.

Item 6d provides for deferrals of obligations to pay income tax, which are addressed in a separate code section that expressly provides that such obligations shall be deferred until six months following release from active duty. (Mil. & Vet. Code § 409.6.)

**Specific Comments Requested**

In addition to seeking comments on the proposed new rule and forms, specific comment is requested on whether the three proposed forms should be mandatory or optional. Making the forms mandatory would assure that appropriate notice is included in all petitions and will provide a standard format to assure that parties provide the court with all necessary information. Leaving them optional would allow a service member with complex or multiple obligations to draft his or her own pleadings.

Rule 3.1372 of the California Rules of Court would be adopted, effective January 1, 2012, to read:

1 **Title 1. Civil Rules**

2  
3 **Division 11. Law and Motion**

4  
5 **Chapter 8. Other Civil Petitions**

6  
7 **Rule 3.1372. Petitions for relief from financial obligations during military service**

8  
9 **(a) Application**

10  
11 This rule applies to petitions for relief from financial obligations made by a service  
12 member under Military and Veterans Code section 409.3.

13  
14 **(b) Service of petition**

15  
16 Service of the petition for relief and all supporting papers must be made in the manner  
17 provided by law for service of summons in civil actions.

18  
19 **(c) No memorandum required**

20  
21 Unless ordered by the court, no memorandum is required in support of or opposition to a  
22 petition for relief.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="margin-left: 150px;">FAX NO.:</span>                  E-MAIL ADDRESS:                  ATTORNEY FOR <i>(Name):</i></p>	<p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 1.2em; font-weight: bold;">DRAFT</p> <p style="font-size: 1.2em; font-weight: bold;">Not approved by the Judicial Council</p> <p style="font-size: 1.2em; font-weight: bold;">04.15.11</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>                  STREET ADDRESS:                  MAILING ADDRESS:                  CITY AND ZIP CODE:                  BRANCH NAME:</p>	
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<p><b>NOTICE OF PETITION AND PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE</b></p>	CASE NUMBER:

*No filing fee or court costs are to be charged for this petition. (Mil. & Vet. Code, § 409.14.)*

1. TO *(name):*
2. A hearing on this petition will be held as follows *(clerk to complete; hearing to be set within 25 days of filing):*

a. Date: <span style="margin-left: 50px;">Time:</span> <input type="checkbox"/> Dept.: <span style="margin-left: 50px;"><input type="checkbox"/> Room:</span>
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b. Address of court is  same as noted above  other *(specify):*

**NOTICE TO RESPONDENT**

Any response you wish to make to this petition to stay financial obligations must be filed with the court and served on the petitioner no later than **five** days before the date of the hearing in 2. See Military and Veterans Code section 409.3(b).

3. Petitioner is or was an officer or enlisted member of the National Guard or a reservist of the United States Military Reserve and *(check one):*
  - a.  has been called or ordered into full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
  - b.  is currently in full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
  - c.  is within six months of having completed full-time active duty in the state or federal armed services. (Mil. & Vet. Code, § 400 and 409.3(a).)
4. Petitioner has a financial obligation or liability to respondent that is
  - a.  an obligation to purchase real property payable in installment payments or secured by a mortgage or instrument like a mortgage, incurred before petitioner's active military service began.
  - b.  a financial obligation or liability incurred before petitioner's active military service began.
  - c.  a tax or assessment due before or during petitioner's active military service.
5. Petitioner is not seeking to stay or defer an obligation to pay child support. *(Any request to modify a support order must be made on Notice of Activation of Military Service and Deployment and Request to Modify A Support Order (form FL-398).)*
6. Petitioner's ability to pay the financial obligation or liability to respondent has been materially affected by reason of petitioner's military service.
7. Petitioner's statements above are established by facts set forth in the *Declaration in Support of Petition for Relief From Financial Obligations During Military Service* (form MIL-015) filed with this petition.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

- 8 a. Petitioner requests a stay of the enforcement of the financial obligation during petitioner's military service.
- b.  Petitioner also requests the following relief:
- (1)  For an obligation secured by real property: extension of the time to pay the obligation to a period equal to the total time remaining on the obligation plus a period of time equal to the period of active military service.
- (2)  For obligations other than those involving installment payments for real property, a period of time equal to the period of time in which petitioner was on active military service to pay, during which petitioner is to pay the obligation and any accumulated interest due in equal periodical installments.
- (3)  For other relief (*describe relief requested*):

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(TYPE OR PRINT NAME)

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(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)



#### Request 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 hearing. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS: <i>(Optional):</i> _____ 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> <b>Not approved by</b> <b>the Judicial Council</b></p> <p style="text-align: center;"><b>03.28.11</b></p>
<p style="text-align: center;"><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF <i>(Name of each petitioner):</i>	
<p><b>DECLARATION IN SUPPORT OF PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE</b></p>	CASE NUMBER:

I *(name):* \_\_\_\_\_ declare as follows:

1. I am or was a member of the National Guard or a reservist of the United States Military Reserve and I *(check the applicable boxes):*  
 have been called or ordered into  am currently serving  am within six months of having completed full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code § 400(b).)
  
2. My expected dates and location of full-time active service are as follows *(describe dates [including beginning and release dates] and location in service, with rank, branch, and unit of service):*
  
3. I have attached as Exhibit A a true and correct copy of *(check one):*  my military orders  a certificate attesting to the above signed by an appropriately authorized officer of my military department branch or unit  other documents as evidence of my military service, listed below. *(Bring original of documents to hearing if available.)*
  
4. The financial obligation or liability from which I am seeking relief is *(identify and describe in detail what obligations or liabilities to respondent you are seeking relief from, including when they were incurred):*

Continued on form MC-025 *(attach that form if you need more space)*

5. I have attached as Exhibit B true and correct copies of evidence of the above obligations as follows *(attach copy of mortgage statement, loan statement, bill, tax bill, or other evidence of your financial obligations or liabilities and list the documents below.)*

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

6. The following facts show why my ability to pay the financial obligation or liability to respondent has been materially affected by my military service:

Continued on form MC-025 (*attach that form if you need more space*).

7.  I have attached as Exhibit C copies of documents that support the above facts. (*List any documents you have attached to support the facts described above*):

8. The number of pages attached to this declaration is \_\_\_\_\_.

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct.

Date:

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

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)



ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ 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> <p style="text-align: center;"><b>04/15/11</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<b>ORDER ON PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE</b>	CASE NUMBER:

1. The application was duly considered
- a.  at a hearing on (date): \_\_\_\_\_ in Department: \_\_\_\_\_ of the above-entitled court.
- b. The following persons were present at the hearing:
- (1)  Petitioner/Plaintiff                      (2)  Petitioner/Plaintiff's attorney (name):
- (3)  Respondent/Defendant                      (4)  Respondent/Defendant's attorney (name):
- (5)  No person appeared

#### THE COURT FINDS

2.  Petitioner is or was an officer or enlisted member of the National Guard or a reservist of the United States Military Reserve and
- a.  has been called or ordered into full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- b.  is currently in full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- c.  is within six months of having completed full-time active duty in the state or federal armed services. (Mil. & Vet. Code, §§ 400 and 409.3(a).)
- d.  none of the above apply to petitioner.
3. Petitioner's ability to pay to respondent a financial obligation or liability incurred before active duty began (check one)
- has  has not been materially affected by reason of petitioner's military service.
4.  Other findings (if any):

#### THE COURT ORDERS

5.  The petition for relief is **denied**.
6.  The petition for relief is **granted** as follows (check all relief granted):
- a.  Petitioner's obligation to pay respondent on the financial obligation identified below is deferred (identify financial obligation by creditor, loan number, property address, or other identifying information):
- (1)  The deferral of payments begins on (date of beginning of active military service):

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

6. a. (2)  The deferral of payments ends on (*date of release from active military service*):  
**If petitioner is released from active military service before this end date, petitioner shall immediately notify respondent of the date of his or her release and shall resume payments on the first day of the month following release.**
- b.  *On deferral of an obligation requiring installment payments:* The deferred obligations of principal and interest are to be added to the principal balance of the loan identified above and the maturity date is to be extended by a period of time equal to the period in which petitioner is in active military service, with the rate of interest to be as described in the contract.
- Other terms (*if any*):
- c.  *On deferral of an obligation not requiring installment payments:* The deferred obligation described above is to be paid as follows:
- (1)  In a lump sum at the end of the deferral period
- (2)  Over a period of time equal to the period of active military service, in equal monthly payments, with interest accruing at \_\_\_\_\_ percent per year
- (3)  Other terms (*if any*):
- d.  *On deferral of an obligation to pay income tax:* The obligation of petitioner to pay income tax is deferred until six months after the petitioner's release from active military service. (Mil & Vet. Code, §409.6.)
- (1) Current expected release date is (*date*):
- (2) Deferral of payments ends on (*date*): **If petitioner is released from active military service before this end date, petitioner shall immediately notify respondent of the date of his or her release and shall resume payments on the first day of the month six months following release.**
- (3) No interest shall accrue on the tax amounts during the deferral period and no penalties shall be imposed for nonpayment of taxes during that period.
- e. During the period of deferral, respondent may not exercise any remedies otherwise available for petitioner's failure to comply with the terms of the financial obligation. Respondent may not impose fines, penalties, or late charges and may not institute or continue proceedings to attach or foreclose on property securing the obligation.
7.  Other orders (*if any*):

Date:

## Item SPR11-20 Response Form

**Title:** **Civil Petitions: Adopt Rule and Forms for Expedited Hearings on Petitions for Relief from Financial Obligations During Active Military Service** (adopt Cal. Rules of Court, rule 3.1372; and approve forms MIL-010, MIL-015, and MIL-020)

- 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.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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.*