



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Military Service: Notification of a Party's Military Status	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve form MIL-100	January 1, 2014
Recommended by	Date of Report
Collaborative Justice Courts Advisory Committee	October 8, 2013
Hon. Richard Vlavianos, Chair	Contact
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Executive Summary

The Collaborative Justice Courts Advisory Committee proposes approving a new optional form to inform the court that a party in a court case is in the military. Knowledge of a party's status as a current or former member of the armed services or reserves enables courts to address legal issues for which military status is relevant and to better administer justice. It also helps courts comply with the sentencing requirements of Penal Code section 1170.9 and makes it easier to identify when outside resources are available to military and former military court users. This proposal responds to Assembly Bill 2371 and a request to the Administrative Office of the Courts to amend Judicial Council forms to allow identification of court litigants who have a military affiliation.

Recommendation

The Collaborative Justice Courts Advisory Committee (CJCAC) recommends that the Judicial Council approve new optional form MIL-100, *Notification of Military Status*, effective January 1, 2014.

Previous Council Action

There has been no previous council action.

Rationale for Recommendation

This proposal responds to a need to identify, at an early stage in court proceedings, individuals who have been or currently are in the United States military.

Even though the military or veteran status of a party may be relevant in many different kinds of court cases, no general Judicial Council forms are available for use in any case-type to notify the court of military status. Government reports calculate 23,440,000 veterans in the United States, of which approximately 1.7 million are veterans of Iraq and Afghanistan. In 2012, the United States Census Bureau reported that California is home to more veterans than any other state, with more than 2 million veterans residing here. Significant numbers of veterans and active duty military personnel are involved with the court system. In addition to appearing in civil and family law cases where their military status may be a factor in terms of notice and other rights and protections, research from the Department of Justice indicates that approximately 1.2 million veterans are arrested annually and that many will face prosecution in court. Research has also shown that traditional services do not always adequately meet the needs of veterans. Fortunately, many veterans are entitled to treatment through the U.S. Department of Veterans Affairs (VA), and legislation, such as Penal Code section 1170.9, has recognized this fact and identified the VA as a resource that the court may be able to use in the administration of justice.

Penal Code section 1170.9 requires that whenever a person is convicted of a criminal offense, is eligible for probation, and alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. military, the court must hold a hearing before sentencing to make determinations regarding the defendant's military service and whether the defendant suffers from a mental disorder or condition as a result of that service. If the court finds those factors to be present and places the defendant on probation, Penal Code section 1170.9 authorizes the court to place the defendant into a treatment program, entitles the defendant to receive sentence credits for residential treatment, and authorizes the court and an assigned treatment program to collaborate with the VA to maximize benefits and services available to the defendant.

In September 2012, the Legislature passed Assembly Bill 2371, which added subdivision (h) to Penal Code section 1170.9, effective January 1, 2013. Under subdivision (h), in some circumstances, a court may grant restorative relief to an eligible criminal defendant who acquires a criminal record because of a mental health disorder stemming from his or her service in the U.S. military. MIL-100 would assist courts in complying with Penal Code section 1170.9 while allowing a vehicle for veterans to self-identify.

In addition, the Administrative Office of the Courts received a letter, jointly authored by members of the judicial and legal communities, requesting amendment of all mandatory Judicial Council forms to include information about whether a party is a veteran of any branch of the U.S. armed forces. The request was rooted in the belief that providing the court with this information would allow the court to better administer justice and better enable attorneys to represent the interests of their clients. The committee considered this request but determined that revising numerous forms, some of which have limited space, would create a workload burden on courts. The committee believes that creating a stand-alone optional form would meet the same goal in a less burdensome fashion.

In creating this optional form to identify military status, the Collaborative Justice Courts Advisory Committee believes that, with the use of this form, courts will be able to process cases more efficiently while improving the fair administration of justice.

Comments, Alternatives Considered, and Policy Implications

Public Comments

The invitation to comment was circulated from April 19, 2013, through June 19, 2013, to the standard mailing list for proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Eight comments were received. Six commentators agreed with the proposal as circulated, and one agreed with the proposal subject to specified modifications. One commentator did not indicate a position but agreed with the proposal, subject to modification. A chart with the full text of the comments and the committee's responses is attached at pages 7–9. Specifically:

- Two commentators agreed without providing additional commentary.
- One commentator, a judicial officer, indicated that the form will be very helpful.
- Two commentators requested that the form, which was designed for use in criminal and juvenile dependency proceedings, be expanded to include additional case types. The State Bar of California's Standing Committee on the Delivery of Legal Services requested that the form be expanded to include family law and civil matters. A second commentator indicated that the form should be made available in civil and small claims matters and noted that, in the absence of a Judicial Council form, some courts have had to develop their own local forms to gather military status information from court users. The committee responded to these requests by expanding the flexibility of the form so that it can be filed in any case type.
- One commentator, a county criminal court operations managers group, agreed with the proposal, asked for some information on the form's use, and suggested moving the notice box. For Judicial Council format consistency, the requested change was not made.

- One commentator suggested a punctuation change, which was made.
- One commentator, a court operations manager, agreed with the proposal, indicating that it would ensure the most updated information is being used by the agency and county clerk.

Committee Comments

The Collaborative Justice Courts Advisory Committee received some additional comments from other Judicial Council advisory bodies after the comment period.

The Criminal Law Advisory Committee (CLAC) did not agree with the proposal. Its comments and CJCAC's responses are summarized below:

- Information about military status could be conveyed orally in court, thereby rendering the form unnecessary.
 - CJCAC identified the need for an optional form to assist veterans in efforts to inform the court of military status in a variety of case types. The form is optional, so it can be used when needed.
- It would be more appropriate to have military status information gathered by probation during the preparation of the sentencing report. As an alternative, amend the rules of court that prescribe the content of sentencing and supervision reports to require military status information.
 - CJCAC sought an approach that could be used in a wide variety of case-types and that did not impose additional workload on courts or justice system partners, thus opting for an optional form rather than additional rule provisions or mandatory forms. CJCAC is open to considering rule changes as suggested by CLAC, if needed at some time in the future.
- The form wouldn't be used often because it is signed under penalty of perjury.
 - CJCAC agreed to remove the required signature on penalty of perjury in order to support broad use of the form.
- Because of the cost associated with form use, CLAC disfavors any new forms that are unnecessary.
 - CJCAC considered this concern, but chose the proposed form as an optional form in order to avoid undue burdens on local courts. Moreover, CJCAC noted that obtaining military status information early in the life of the case is important to case outcomes and potentially cost saving to the court by preventing additional hearings related to military status if learned later in the case.

The Family and Juvenile Law Advisory Committee discussed the form both before and after the comment period. Before the comment period, the committee provided feedback that the form would be helpful in family law and inquired about adding child support to the list of case types for which there was a check box. CJCAC considered this request, but the addition was not made because the check box for family law cases could encompass child support and having a second

box may cause confusion for court users who have family cases that also have child support issues. Child support issues could also be noted in the item on the form marked 'other'.

After the comment period the committee reconsidered the form in light of revisions made in response to comments. During that discussion members acknowledged the value in having a single form instead of changes to numerous forms as well as the value in notifying the court of a party's military status. Members did express concern that the version under review could incorrectly lead parties to think that the court would take affirmative action on the matter with regard to the party's military status. To address this concern CJCAC decided to remove the sentence: "I am requesting that the court be notified of the above military status for consideration of its relevance in the above entitled proceeding." A member also questioned why the form in item 1 lists criminal, family, and juvenile as case types without including other case types where military status may be of note, for example Probate. CJCAC decided to list the three case types where military status is most likely to be relevant but to also include "other" for use in other case types.

Alternative actions considered and policy implications

The Collaborative Justice Courts Advisory Committee considered proposing that all current Judicial Council forms where military or veteran status could be relevant be amended to include military status. However, modifying all the relevant Judicial Council forms would be costly to implement for the courts, so the more modest proposal of creating an optional stand-alone form was preferred. The issue of routinely identifying parties' military status could be left unaddressed, as it has been until now. However, this approach leads to an ad hoc system in which those who are knowledgeable or have the assistance of counsel are able to exercise their rights and employ the protections afforded them as current or former members of the military, whereas those who are self-represented or otherwise unaware of these rights and protections may miss out entirely on these benefits and may be unable to access relevant services that are available based on military status. This ad hoc system injects an element of unfairness in the justice system process because courts are often unaware of the military status of parties.

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 form. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts. Cost savings are possible if the court is aware at an early stage of the proceeding that a party to the action has a military affiliation that is relevant to the case because such knowledge reduces the chance that additional hearings will be necessary to address this status once it is discovered at a later time.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed rule supports the policies underlying Goal IV, Quality of Justice and Service to the Public. Specifically, this rule supports objective 3, "Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders,

procedures, and processes”; and objective 8, “Collaborate with justice system partners and community stakeholders to identify and promote programs that further the interests of all court users—including children and families.”

Attachments

1. Form MIL-100, at page 7
2. Chart of comments, at pages 8–10

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>): _____	Draft Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY STATUS	CASE NUMBER:

I (*name*): _____ declare as follows:

1. I am a party in a criminal family juvenile other (*specify*): _____ court case.
2. I am currently a member of the state or federal armed services or reserves. My entry date is: _____, and I:
 - a. am on active duty service
 - b. have been called or ordered into active duty service
 - c. am not on active duty service
 - d. other (*please explain*): _____
3. I used to serve in the state or federal armed services or reserves. I was discharged on (*date*): _____
4. I am filing this form on the behalf of _____, a party to the above entitled case, whom I am informed and believe is a member veteran of the state or federal armed services. I am the attorney other (*specify*): _____ of this party. My contact information is provided in the box at the top of this form is as follows:
 Name: _____ Address: _____
 Telephone number: _____

Date: _____

(TYPE OR PRINT NAME)

SIGNATURE

NOTICE

Filing of this notification form does not substitute for filing of other forms or petitions that are required by your court case. If you are requesting consideration or restorative relief under Penal Code section 1170.9, this form alone will not meet the requirement that you assert to the court that the crime you were charged with was a result of a condition caused by your military service. If you are filing for relief from financial obligation during military service, a notification of military deployment and request to modify a support order, or other relief under the Service Members' Civil Relief Act (50 U.S.C. App. §§ 501—597(b)), you must complete the appropriate forms, and completion of this form is not required. Please see form MIL-010 (*Notice of Petition and Petition for Relief From Financial Obligations During Military Service*) and form FL-398 (*Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*).

SPR13-32**Military Service: Optional Form for Notification of a Party's Military Status (Form CR-109/JV-145/MIL-100)**

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	Hon. Thomas M. Maddock Judge Superior Court of Contra Costa County Martinez, California	A	This will be very helpful.	No response required.
2.	Adam Jaffe Owner Law Office of Adam Jay Jaffe Solana Beach, California	NI	This form should be amended for Civil/Small Claims uses as well. San Diego Superior has a local form (SDSC SC-020; Declaration of Military Status - Small Claims) to be used in Small Claims cases where the defendant is in the military. There is also a local form in Sierra County (Declaration of Military Status / Request For Dismissal) There is a form that the courts provide that contains this info, but there is CURRENTLY no judicial council form on the matter. The Servicemembers Civil Relief Act (SCRA) provides protections to armed services members while on active duty. The proposed form would benefit servicemembers and promote the ideals if the SCRA.	The committee has revised the form to include an "other" check box and a space to fill in additional case types. The committee also revised the form category to "military form" to accommodate this wider range of case types in which it can be used.
3.	Orange County Bar Association By Wayne R. Gross President Newport Beach, California	A	No specific comment.	No response required.
4.	Standing Committee on the Delivery of Legal Services (SCDLS) The State Bar of California By Sharon Ngim Program Developer & Staff Liaison San Francisco, California	AM	It would be helpful for Form CR-109/JV-145/MIL-100 to be an optional stand-alone form that can be used in family law cases as well as criminal and juvenile dependency cases. There are some statutes which require expedited proceedings in family law when a party is in the	The committee has revised the form to include family law cases. The committee also revised the form category to "military form" to accommodate this wider range of case types in which it can be used.

SPR13-32

Military Service: Optional Form for Notification of a Party’s Military Status (Form CR-109/JV-145/MIL-100)

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	Commentator	Position	Comment	Committee Response
			<p>military. The form also would be helpful in other civil cases where military status may be relevant.</p> <p><u>Disclaimer</u> This position is only that of the State Bar of California’s Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.</p>	
5.	Superior Court of Los Angeles County Los Angeles, California	A	No specific comment.	No response required.
6.	Superior Court of Orange County Orange County Criminal Operations Managers By Kristal Nava Orange, California	A	<p>The Orange County Criminal Operations Managers agree with the proposed changes. However, we have the following questions/recommendations:</p> <ol style="list-style-type: none"> 1. At what stage of the case is the form to be filed? 2. What is the Court required to do upon receipt of the form? Are there any new noticing requirements? 3. Can a defendant’s family member/friends file the form on the defendant’s behalf? If so, the form should include the submitting party’s identifying information (i.e., relationship, address, etc.) 4. We recommend moving the Notice box (bottom of the form) below the 	<p>The committee has the following responses to the questions and recommendations:</p> <ol style="list-style-type: none"> 1. The form can be filed at any stage of the case. 2. There are no new noticing requirements. It is anticipated that the Court will address the issue of military status if it sees it may be relevant. 3. Yes, someone else may file the form on the service member’s behalf. The form was revised to reflect the information requested. 4. The standard format for Judicial Council forms places notice boxes at the bottom of the page.

SPR13-32

Military Service: Optional Form for Notification of a Party's Military Status (Form CR-109/JV-145/MIL-100)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			statement that reads, " I am requesting that the court be notified of the above military status...". This will avoid confusion regarding the need to file additional appropriate forms (i.e., a motion for restorative relief).	
7.	Superior Court of San Diego County By Mike Roddy Executive Officer San Diego, California	A	Form CR-109/JV-145/MIL-100: Punctuation correction - remove the comma after Penal Code in the "Notice" box.	The requested change has been made.
8.	Superior Court of Tulare County By Sherry Pacillas Court Operations Manager Visalia, California	A	In agreement with the proposed updated policies and Judicial Counsel forms. This would ensure the most updated information is being utilized by the agency and County Clerk.	No response required.